

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.34341 of 2023

Arising Out of PS. Case No.-4 Year-2023 Thana- MAHILA PS District- Buxar

Bittu Chaudhary Son Of Late Jag Narain Chaudhary Resident Of Village-
Diwan Ke Barka Gaon, Ps- Sikraul, Distt- Buxar

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Rohit Kumar, Advocate

For the Opposite Party/s : Mr. Anil Kumar Singh No.1, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

4 03-08-2023 Heard learned counsel appearing on behalf of the
petitioner and learned APP appearing on behalf of the State.

2. The petitioner seeks bail in connection with Buxar
(Mahila) P.S. Case No. 4 of 2023 registered for the offence
under Section 376-DA of the Indian Penal Code and Section 6
of the POCSO Act.

3. The accused/petitioner is named in the F.I.R. and is
in custody since 26.01.2023.

4. The allegation against the petitioner is to commit



gang-rape upon minor daughter of the informant aged about 12 years alongwith other co-accused persons, where she was returning to her home after attending republic day function at her school.

5. Learned counsel appearing on behalf of the petitioner submitted that petitioner has been falsely implicated with present case out of local disputes and differences and as petitioner and other co-accused, namely Tengari @ Amitab Bachan, noticed daughter of informant with one Vikash Kumar, in compromising position, the present false implication was raised against petitioner. It is also submitted that the date of birth of victim, which is shown as 22.07.2011, from her school register being student of class-VII is not appearing convincing on its face and also not in terms of rule: 94 of the Juvenile Justice Act, because same is not from the first attending school and if on other hands the age from medical examination be taken into consideration then certainly the victim appears major by adding +2 years in her age, which appears from her medical examination ranging between 16 to 17 years. In support of the submissions, learned counsel relied upon the judgment of Hon'ble Supreme Court in the matter of *Jaya Mala v. Home Secretary, Govt. of Jammu & Kashmir and others* reported as



(1982) 2 SCC 538. It is further pointed out by learned counsel that medical report is also not suggesting that rape was committed upon as no 'spermatozoa' was found in vaginal swab upon medical examination of victim, which was conducted on the very next day of the occurrence. While concluding the argument, it is submitted that petitioner found involved in one more case, where he is on bail and moreover, investigation of this case has been completed, for which, charge-sheet has already submitted, as such, there is no chance of tampering with the evidence.

6. Learned APP appearing on behalf of the State, while opposing the prayer for bail submitted that victim while returning to her home after attending the republic day function received injuries and while she was with her friend (Vikas), petitioner alongwith other co-accused Tengari @ Amitab Bachan, came there and after chasing Vikas Kumar, from the room committed gang-rape upon daughter of the informant. It is submitted that victim appears 12 years old as per her school certificate and even as per medical report she appears to be minor on the date of occurrence, was found student of class-VII. It is further pointed out that as per injury report of victim, it appears that she received injury upon her face, neck, chest, back



abdomen, arms, forearm, thigh and legs suggesting that how brutally she was ravished during the course of occurrence. It is further submitted that none finding of 'spermatozoa' inside the vaginal swab is not leading to a conclusion, *ipso-facto*, that rape was not committed upon for the reason that rape is a legal finding not a medical one. It is further submitted that the blood stained clothes and bed sheet were seized from the place of occurrence, where on their forensic examination stain was confirmed with human blood and semen, where DNA report is still awaited. It is submitted that victim specifically alleged these two petitioners as to commit rape upon her, where informant also noticed petitioner alongwith co-accused Tengari @ Amitab Bachan, who ran away after opening the door of the room, where alleged occurrence took place.

7. In view of the facts and circumstances as mentioned above, and by taking note of fact as victim, who appears minor on the date of occurrence specifically alleged this petitioner through her statement as recorded under Section 164 of the Cr.P.C. as to commit rape upon her alongwith other co-accused person, where her undergarments and bed sheet found with human blood and semen on forensic examination, accordingly this Court is not inclined to grant privilege of bail to



the petitioner, at present.

8. Accordingly, the prayer for bail of the petitioner is rejected herewith.

9. Office is directed to seal the FSL report and send it back to the learned Trial Court.

10. Presence of Investigating Officer of this case is dispensed with.

(Chandra Shekhar Jha, J.)

S.Tripathi/-

U		T	
---	--	---	--

