

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.34032 of 2023

Arising Out of PS. Case No.-139 Year-2022 Thana- KUDHNI District- Muzaffarpur

Sitesh Kumar Son Of Pramod Singh @ Pramod Kumar Singh Village-
Balbhadrapur Ps- Kudhni Dist- Muzaffarpur

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. S.D. Sanjay, Sr. Advocate
	:	Mrs. Priya Gupta, Advocate
	:	Mr. Rahul Kumar, Advocate
For the Opposite Party/s	:	Mr. Binod Kumar, APP
For the Informant	:	Mr. Dhananjay Kumar Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

4 18-07-2023 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 Kudhni
P.S. Case No.139 of 2022 registered for the offence under
Sections 376, 504 and 506 of the Indian Penal Code.

3. The accused/petitioner is named in the F.I.R. and is
in custody since 10.03.2023.

4. The allegation against the petitioner is to commit
rape upon informant/victim, who is a married lady, mother of
two children on the intervening night of 17.02.2022, while she
came to her paternal home from the her matrimonial village on
14.02.2022. It is further alleged through F.I.R. that present



occurrence of rape was committed at gun point after criminal trespasses to the house of informant/victim.

5. Learned senior counsel Sri S.D. Sanjay, while appearing on behalf of the petitioner submitted that petitioner has been falsely implicated with present case out of neighbourhood disputes and differences and same is apparent from the fact that the present F.I.R. was lodged with the delay of 33 days, without any just explanations. It is submitted that victim though specifically alleged this petitioner to commit rape upon her through her statement as recorded under Section 164 of the Cr.P.C., but she refused to join the medical examination as to collect corroborative evidence, in support of her allegations. It is further pointed out that informant/victim and petitioner both were in contact with each other prior to the occurrence and were in friendly terms, which is apparent from CDRs (Call Detail Records). It is further submitted that no such threat call as alleged was made on 15.03.2022, at about 10:45 PM, by this petitioner to informant/victim as per CDRs (Call Detail Records), rather it appears that on 15.03.2022 informant/victim called this petitioner at about 4:14 PM, which was responded by petitioner at about 8:50 PM. It is also submitted in this context that informant/victim called this



petitioner also at about 11:06 PM and 11:18 PM a day before alleged occurrence. It is further submitted that informant/victim and petitioner both knew each other since school life, as admitted through statement of victim recorded under Section 164 of the Cr.P.C. and now petitioner cannot take shelter of criminal antecedents. While concluding the argument, it is submitted that petitioner found involved in nine more criminal cases, where he is on bail and moreover, investigation of this case has been completed, for which, charge-sheet has been submitted, as such, there is no chance of tampering with the evidence.

6. Learned APP duly assisted by learned counsel appearing on behalf of the informant, while opposing the prayer for bail submitted that informant/victim specifically raised allegation as to commit rape upon her against this petitioner and this fact also supported through her statement recorded under Section 164 of the Cr.P.C. It is further submitted that denial for medical examination is of no bearing over the merit of this case, as it is established principle of law that rape is a legal finding and not a medical one. It is further submitted that petitioner has criminal antecedents as he found involved in nine more criminal cases and he himself is delaying the trial by filing his discharge



petition.

7. In view of the facts and circumstances as mentioned above and by taking note of communication between the parties prior and after the occurrence, where the present F.I.R. was lodged with a delay of 33 days coupled with the fact that charge-sheet has already submitted, where petitioner is in custody since 10.03.2023, accordingly petitioner, above named, is directed to be released on bail **after framing of charge** in connection with Kudhni P.S. Case No.139 of 2022 on furnishing bail bond of Rs.10,000/- (Rupees Ten Thousand) with two sureties of the like amount each to the satisfaction of learned Chief Judicial Magistrate, Muzaffarpur/concerned court, subject to the conditions as mentioned under Section 437(3) of the Cr.P.C. with further conditions :-

(i) That petitioner shall not interact with victim or any of her family members during the trial or to influence any prosecution witnesses in whatsoever manner, failing which, the State shall be at liberty to move before the learned Trial Court itself for the cancellation of bail bond of the



petitioner.

(ii) Accused/Petitioner shall cooperate in the trial and shall be physically present on each and every date before the Trial Court till conclusion of the trial and exemption from physical appearance be allowed by the Trial Court, only on medical ground of the petitioner duly supported by the documents.

(iii) That one of the bailors shall be deponent of the present bail petition.

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(Chandra Shekhar Jha, J.)

