

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.34319 of 2023

Arising Out of PS. Case No.-11 Year-2022 Thana- MAHILA P.S. District- Sitamarhi

SANTOSH KUMAR Son of Ram Kishor Ray Resident of Village - Sughridih
(Sugaridha), P.S.- Mahindwara, District - Sitamarhi (Bihar).

... .. Petitioner/s

Versus

The State of Bihar.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Uday Kumar, Advocate
For the Opposite Party/s : Mr. Madhura Nand Jha, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

3 24-07-2023 Heard learned counsel appearing on behalf of the
petitioner and learned counsel appearing on behalf of the State.

2. Let the defect(s), if any, be removed within a period
of four weeks from today.

3. The petitioner seeks bail in connection with
Sitamarhi Mahila P.S. Case No. 11 of 2022 registered for the
offence under Sections 376(DA) of the Indian Penal Code and
Section 4/6 of the Protection of Children from Sexual Offences
Act.

4. The accused/petitioner is named in the F.I.R. and is
in custody since 20.06.2022.



5. The allegation against the petitioner is to commit rape upon the minor daughter of informant aged about 15 years alongwith two co-accused persons, while she was returning to her home after attending a marriage party. Occurrence took place at about 3:00 AM on 10.06.2022.

6. Learned counsel appearing on behalf of the petitioner submitted that petitioner falsely implicated with present case out of local village politics as victim and petitioner both belongs to same village. It is submitted that the present FIR is bad in the eyes of law as same is completely based upon hearsay input as informant is not the eye-witness of the occurrence, rather the narration of FIR is based upon the information as received by informant from her daughter/victim. It is also submitted that medical examination was conducted upon the victim on next day i.e. 11.06.2022 in the background of allegation that she was gang raped by three accused persons including petitioner, but medical report is not appears corroborating by suggesting any sexual assault. Learned counsel further pointed out that the statement of victim was recorded on the next date of her medical examination i.e. on 12.06.2022 and till then victim was with her parents and as such formulation or framing of allegation cannot be ruled out. While concluding the



argument, it is submitted that petitioner is a man of clean antecedent and moreover, investigation of this case is completed, for which charge-sheet has been submitted, and, as such, there is no chance of tampering with the evidence.

7. Learned APP, while opposing the prayer of bail submitted that the victim specifically alleged this petitioner alongwith two co-accused persons committed rape upon her while she was returning to her house at about 3:00 AM after attending marriage party. It is also submitted that the seized blood stained clothes after FSL examination confirmed the human blood and semen. While concluding the argument, it is submitted that non finding of any medical evidence does not lead to a conclusion *ipso facto* that rape was not committed upon as rape is a legal finding not medical one. It is submitted that the age of victim as per medical examination found between the age group of 12-15 years.

8. Considering the facts and circumstances as mentioned above and by taking note of statement of victim as recorded under Section 164 of Cr.P.C., where she specifically alleged this petitioner to commit rape upon her alongwith other co-accused persons, where, upon forensic examination, human blood and semen were found upon her clothes, accordingly, the



prayer of bail of petitioner is rejected herewith for the present.

9. The learned Trial Court is directed to conclude the trial during specified period as provisioned under POCSO Act.

(Chandra Shekhar Jha, J)

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