

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.43737 of 2022

Arising Out of PS. Case No.-326 Year-2018 Thana- SURSAND District- Sitamarhi

MD. GULAV @ MD. GULAB S/o Md. Basir Rangrez @ Md. Basir R/o
village- Sursand Purvi, Ward No. 06, P.O.- Sursand, P.S.- Sursand, District-
Sitamarhi (Bihar)

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Director (FSL), Patna

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Ms.Smiti Bharti, Advocate
For the Opposite Party/s : Mr.Anand Mohan Prasad Mehta, APP

CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
ORAL ORDER

11 08-02-2023 Heard learned counsel for the petitioner and learned
Additional Public Prosecutor for the State.

This application for regular bail arises out of Sursand
P.S. Case No. 326/2018, disclosing offences punishable under
Section 376 of the Indian Penal Code and Sections 4/6 of the
POCSO Act.

The petitioner is in custody since 24.12.2018. His
prayer for bail was earlier rejected by this Court on 07.04.2021
passed in Cr. Misc. No. 8540/2021.

Learned counsel appearing on behalf of the petitioner
has submitted with reference to the order-sheet that the
prosecution's evidence was closed way back on 07.12.2021 and
the petitioner's statement came to be recorded by the trial court



under Section 313 of the CrPC on 23.11.2021, though the arguments were advanced on behalf of the defence after closure of the evidence of the prosecution's witnesses.

When the matter was taken up on 30.11.2012, following order was passed :-

"The petitioner is an accused in Sursand P.S. case No. 326 of 2018 registered for the offences punishable under Sections 376 of the Indian Penal Code and Section 4/6 of the Protection of Children from Sexual Offences Act, 2012. He is in custody in connection with the said case since 24.12.2018.

Ms. Smriti Bharti, learned counsel appearing on behalf of the petitioner has submitted with reference to the order-sheet maintained by the trial Court that examination of prosecution's witnesses has already been closed on 07.12.2021. From the subsequent orders passed by the trial Court, it appears that the trial Court is repeatedly adjourning the trial awaiting production of serological report of the Forensic Science Laboratory (FSL).

Learned Additional Public Prosecutor representing the State, based on instructions which he has received from the Forensic Sciences Laboratory, Patna states that the FSL had already sent its report in May, 2022. In the trial Court's order dated



21.10.2022 also, it is mentioned that the serological report is awaited.

In peculiar facts and circumstances of the case, learned counsel for the petitioner is permitted to implead the Director, Forensic Sciences Laboratory, Patna as opposite party no. 2. Let an affidavit be filed by the Director of Forensic Sciences Laboratory, Patna stating as to whether the desired serological report was sent to the appropriate functionary or not.

List this case on 07.12.2022."

Subsequently, on 07.12.2022, following order was passed :-

"It is stated by learned Special Public Prosecutor for the State that an affidavit has been filed in the light of this Court's order dated 30.11.2022 in the Registry on 06.12.2022. The said affidavit is not there on record. He has submitted before this Court, based on the statements made in the said affidavit sworn by the Assistant Director, Serology, Forensic Sciences Laboratory, Patna that FSL report has already been communicated to the concerned person on 05.05.2022 and that no further report is pending with the Forensic Sciences Laboratory to be sent to the concerned authority.

List this case on 04.01.2023 with the said affidavit on record.

Let a copy of this order be



communicated to learned Additional Sessions Judge-VI-cum Special Judge, POCSO, Sitamarhi, forthwith."

From the report submitted by the trial court, it appears that the court is still waiting for the serological report to conclude the trial.

In such circumstance, it will be unjust for the petitioner to be kept in custody when the trial is not proceeding without any fault on his part.

This application is accordingly allowed.

Let the petitioner, above-named, be released on bail on furnishing bail bonds of Rs. 10,000/-(ten thousand), with two sureties of the like amount, each to the satisfaction of learned ADJ-VI Sitamarhi in Sursand P.S. Case No. 326/2018, subject to the condition that the petitioner shall present himself before the trial court as and when required and his bail bonds shall be liable to be cancelled in the event of his absence on two consecutive occasions.

(Chakradhari Sharan Singh, ACJ)

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