

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.45600 of 2023

Arising Out of PS. Case No.-337 Year-2022 Thana- MADHUBAN District- East Champaran

Umesh Prasad Son of Suresh Prasad Resident of village - Baki Tikam, P.S.-
Madhuban, Distt. - East Champaran

... .. Petitioner/s

Versus

1. The State of Bihar
2. Sangeeta Kumari D/o Bramhdev Prasad Resident of village - Baki Tikam,
P.S. - Madhuban, Distt. - East Champaran

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Vindhkeshari Kumar Singh, Senior Advocate
For the Opposite Party/s	:	Mr. Md. Aslam Ansari, APP
For the Informant	:	Mr. Vijay Shankar, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

5 12-09-2023 Learned counsel for the petitioner is permitted to

make corrections in paragraph 1 of the bail petition during the

course of the day.

2. Pursuant to the direction dated 11.09.2023, an
affidavit has been filed on behalf of Mr. Shatrughan Kumar who
was posted as Medical Officer, Sadar Hospital Motihari, East
Champaran who was one of the member conducting the medical
examination of the victim.

3. There is total lack of sensitivity on the part of the
Doctors who have done the medical examination of the victim.

4. In paragraph 4 of the affidavit the format of the
medical examination provided by the Office of the Civil



Surgeon Motihari, East Champaran was stated and the report of the medical board as made available on the format which was available from the office of the Civil Surgeon Motihari, East Champaran.

5. In view of the aforesaid, let the Civil Surgeon, Motihari, East Champaran filed an affidavit clearly stating therein that the format which is annexed as Annexure A to the affidavit filed by the Medical Officer is the same format which was provided by the State Government to the Civil Surgeon Office.

6. In view of the aforesaid, let the matter be placed on 19.09.2023 and on the said date all the medical board team must be present.

7. Learned counsel for the State is requested to file an affidavit before 19.09.2023.

8. The personal appearance of the medical board team is dispensed with for the present and they shall appear on 19.09.2023.

9. Heard Vindhkeshari Kumar Singh, learned senior counsel for the petitioner and learned Additional Public Prosecutor for the State.

10. Petitioner seeks bail who is in custody since



17.12.2022 in connection with Madhuban P.S. Case No. 337 of 2022, F.I.R. dated 08.08.2022 for the offences punishable under Sections 376(D) of the Indian Penal Code and Section 4/6 of the POCSO Act and Section 67 of the I.T Act.

11. According to prosecution case, all accused persons have committed rape upon the victim and this petitioner recorded a video and also threatened the victim.

12. Learned counsel for the petitioner submits that petitioner has clean antecedent and he has falsely been implicated in the present case. He further submits that it appears from the F.I.R that the date of occurrence is 01.07.2022 but the present F.I.R has been instituted on 08.08.2022 i.e. after delay of more than one month without giving any explanation of the delay. He further submits that from perusal of the F.I.R it appears that the victim was in love with the petitioner and the second part of the F.I.R suggests that at best the petitioner has tried to commit rape and when the family members of the victim arrived, the petitioner fled away from the place of occurrence. He further submits that the medical report of the victim does not support the allegation as alleged in the F.I.R and the date of birth of the victim as mentioned in her school certificate is 06.05.2003 which suggests that the victim was major at the time



of occurrence. Hence, no case is made out under the POCSO Act. He further submits that in view of the report of the medical board, no case is made out under 376(D) of the Indian Penal Code. He further submits that the police after investigation submitted the charge sheet against the petitioner. The petitioner is in custody since 17.12.2022.

13. The learned counsel appearing on behalf of the informant as well as learned Additional Public Prosecutor have vehemently opposed the prayer for bail of the petitioner and submits that the statement of the victim was recorded under Section 164 of the Cr.P.C. in which she has categorically stated that the petitioner has committed rape upon her but fairly submits that the medical report of the victim does not support the allegation as alleged as in the F.I.R and as per the date of birth of the victim, she was major at the time of occurrence.

14. Considering the aforesaid facts and circumstances, let the petitioner, above named, be released on bail on furnishing bail bond of Rs. 10,000/- (Ten Thousand) with two sureties of the like amount each to the satisfaction of the learned 1st Additional Sessions Judge, East Champaran, Motihari in connection with Madhuban P.S. Case No. 337 of 2022, subject to the following conditions:-



i. Petitioner shall co-operate in the trial and shall be properly represented on each and every date fixed by the court and shall remain physically present as directed by the court and on his absence on two consecutive dates without sufficient reason, his bail bond shall be cancelled by the Court below.

ii. If the petitioner tampers with the evidence or the witnesses, in that case, the prosecution will be at liberty to move for cancellation of bail.

iii. And further condition that the court below shall verify the criminal antecedent of the petitioner and in case at any stage it is found that the petitioner has concealed his criminal antecedent, the court below shall take step for cancellation of bail bond of the petitioner. However, the acceptance of bail bonds in terms of the above-mentioned order shall not be delayed for purpose of or in the name of verification.

15. Let the matter be placed on 19.09.2023.

(Rajesh Kumar Verma, J)

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