

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.52253 of 2022

Arising Out of PS. Case No.-93 Year-2018 Thana- BHANGWANPUR HAT District- Siwan

SUSHIL UPADHYAY @ SUSHIL KUMAR UPADHYAY S/o Hari Kishore
Upadhya R/o village- Chorauli, P.S.- Bhagwanpur Hat, District- Siwan

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Lalit Kishore, Sr. Adv.

For the Opposite Party/s : Mr.Kalyan Shankar, APP

**CORAM: HONOURABLE MR. JUSTICE NAWNEET KUMAR
PANDEY**

ORAL ORDER

2 02-02-2023 The learned counsel for the petitioner is directed to remove all the defects pointed out by the office within one month.

Heard Mr. Lalit Kishore, the learned Senior counsel for the petitioner as well as Mr. Kalyan Shankar, the learned Additional Public Prosecutor for the State.

The petitioner apprehends his arrest in connection with Bhagwanpur P.S. Case No. 93 of 2018, registered for the offences punishable under Sections 372, 376/34 of the Indian Penal Code and Sections 3,4 and 5 of the Immoral Traffic Act and 14 POCSO Act.

As per allegation, five named accused persons were indulged in immoral act behind the *Orkesta* run by them and the



daughter of the informant was a victim of immoral act done by the named accused persons.

The learned Senior counsel for the petitioner has submitted that the petitioner is not named in the FIR. The two named accused persons, namely, Munna Miya and Naeem Miyan were put on trial in POCSO Case No. 90 of 2019 and vide judgment and order dated 19.06.2019 Naeem Miyan and Munna Miya were acquitted, as none of the witnesses supported the occurrence against them.

On the other hand, the learned APP has opposed the prayer for bail and has submitted that the victim in her statement under Section 164 of the Code of Criminal Procedure has supported the occurrence even against the present petitioner along with Md. Naeem Miyan and Munna Miya.

The victim though named the present petitioner in her statement under Section 164 of the Code of Criminal Procedure along with Naeem Miyan and Munna Miya, but considering all the facts, the trial court has acquitted the co-accused persons, as the victim did not support the case against them. The case of the petitioner is on better footing, as he is not named in the FIR.

Considering the above-mentioned facts and circumstances, the petitioner above-named, in the event of his



arrest or surrender, within four weeks from today, is directed to be released on bail on furnishing bail bonds of Rs.10,000/- with two sureties of the like amount each to the satisfaction of learned Additional Sessions Judge-VI-cum-Special Judge POCSO, Siwan in connection with Bhagwanpur P.S. Case No. 93 of 2018, subject to condition as laid down under section 438(2) Cr. P.C.

Office shall ensure that all defects are removed by the petitioner within the stipulated time mentioned hereinabove, failing which, the matter shall be brought to the notice of this Court.

(Nawneet Kumar Pandey, J)

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