

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.64151 of 2022

Arising Out of PS. Case No.-35 Year-2022 Thana- MAHILA PS District- Gaya

AYUSH KUMAR @ ADITYA KUMAR Son of Dileep Sharma Resident of
Village- Manjhar, P.S.- Paibigha, District- Gaya

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Ms. Rachana Saraswati, Advocate
For the Opposite Party/s	:	Mr. Rabindra Kumar, A.P.P.
For the Informant	:	Mr. Ramchandra Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

6 07-07-2023 Heard learned counsel for the petitioner, learned
counsel for the informant and learned A.P.P. for the State.

The petitioner apprehends his arrest in a case registered for the offences punishable under Sections 376 and 376(3) of the IPC and Sections 4 and 6 of the POCSO Act.

Learned counsel for the petitioner submits that the petitioner is a person with clean antecedent. The learned counsel next submits that victim aged about 17 years alleges that she is a student and on 24.04.2022 at around 12:30 AM when she was sleeping in her room when the petitioner came after climbing the roof and entered her room and gagged her mouth, it is further alleged that the petitioner untied her trouser and forcibly committed rape.

Learned counsel for the petitioner submits that the



petitioner has been falsely implicated in the present case, it is next submitted that petitioner is an Army personnel. It is further submitted that from bare perusal of the allegation as alleged in the FIR it would manifest that the same does not inspire confidence for the reason that the informant alleges that the petitioner came to her room after climbing the roof where her father and mother were sleeping. It is next submitted that from perusal of her statement recorded under Section 164 Cr.P.C. it would manifest that though the informant supports the case of the prosecution but then also states that her grandmother and aunt were sleeping in the same room and when the act was being committed she screamed but still no one heard.

The learned counsel thus submits that it absolutely does not stand to reason that if the petitioner had come to the room of the informant after climbing the roof where her parents were sleeping, it does not appear probable that the parents would not have known that someone has come on the roof slyly. It is further submitted that the informant in her statement recorded under Section 164 Cr.P.C. states that her grandmother and aunt were sleeping and she screamed but still they did not hear, the same also demonstrates that either



no occurrence in the nature as alleged took place or for some ulterior reasons the false case came to be instituted. It is next submitted that the petitioner and the informant are related but then this fact stands concealed in the FIR which further cast an aspersion on the case of the prosecution. It is next submitted that the FIR was instituted after a delay of six days for obvious reasons, it is next submitted that even the injury report does not corroborate rape.

Learned A.P.P. for the State and learned counsel for the informant opposed the prayer for anticipatory bail of the petitioner but are not in a position to rebut the submission of the learned counsel for the petitioner that neither the parents nor her grandmother and aunt came to know about the occurrence and the injury report does not corroborate rape and the fact that petitioner and informant are related.

Considering the submissions made by the learned counsel for the petitioner, the petitioner above-named, in the event of his arrest or surrender before the learned trial court within a period of six weeks from today, be released on anticipatory bail on furnishing bail bonds of Rs. 10,000/- (Rupees Ten Thousand) with two sureties of the like amount each to the satisfaction of the learned trial court where the



case is pending/successor court in connection with Mahila
P.S. Case No. 35 of 2022 subject to the conditions as laid
down under Section 438 (2) of the Cr.P.C.

(Satyavrat Verma, J)

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