

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.70727 of 2022

Arising Out of PS. Case No.-389 Year-2022 Thana- BARUN District- Aurangabad

Vikash Kumar S/O Raj Kumar Paswan Resident of village- Sundar Bigha,
Gothauli, P.S.- Barun, District- Aurangabad (Bihar).

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Ms. Leelawati Kumari, Advocate

For the Opposite Party/s : Mr. Narendra Kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

2 16-03-2023 Heard learned counsel appearing on behalf of the
petitioner and learned APP appearing on behalf of the State.

The petitioner seeks bail in connection with Barun
P.S. Case No.389 of 2022 registered for the offence under
Sections 341, 342, 376 and 504 of the Indian Penal Code.

The accused/petitioner is named in the F.I.R. and is in
custody since 22.08.2022.

The allegation against the petitioner is to commit
rape upon informant/victim aged about 23 years, who is widow
of elder brother of the petitioner.

Learned counsel appearing on behalf of the petitioner
submitted that the petitioner has been falsely implicated in the
present case for the reason to pressurize petitioner to solemnize
marriage with informant/victim as she becomes widow after



death of elder brother of petitioner. It is also submitted that as per face of F.I.R. victim after rape alleged to be locked inside the room, where police during the course of investigation did not find any room with door at the place of occurrence as mentioned in Para No.5 of the Case Diary. It is also pointed out that it is highly improbable that none of the family members were available in the house when alleged occurrence was committed in the mid of the day. It is also submitted that present F.I.R. was lodged after delay of five days of occurrence without any just explanations also suggesting the false implication of this petitioner. While travelling over the argument it is also pointed out that medical report of the victim/informant is not suggesting anything from which it can be gathered that she was subjected to rape. It is further submitted that all the witnesses are hearsay and neighbours. It is also submitted that there are lot of contradictions in the statement of victim/informant as recorded u/s 164 of the Cr.P.C. *qua* F.I.R., suggesting that implication was planned. It is also submitted that alleged occurrence took place in the matrimonial house of the victim/informant and parental house of the petitioner, where no such allegation raised on any previous occasions while informant was living in the said house since last 5 to 6 years.



While concluding the argument, it is submitted that investigation of this case has been completed, for which, charge-sheet has already been submitted, as such, there is no chance of tampering with the evidence.

Learned APP appearing on behalf of the State, while opposing the prayer for bail submitted that victim supported the occurrence in her statement as recorded u/s 164 of the Cr.P.C. and moreover, none finding of any injury does not let to conclusion, *ipso facto*, that rape was not committed upon, for the reason that rape is a legal finding and not a medical one.

In view of the facts and circumstances as mentioned above and by taking note of the contradiction of statement of victim/informant as appears from her statement recorded u/s 164 of the Cr.P.C. coupled with the fact that charge-sheet has already been submitted, let above named petitioner is directed to be released on bail in connection with Barun P.S. Case No.389 of 2022 on furnishing bail bond of Rs.10,000/- (Rupees Ten Thousand) with two sureties of the like amount each to the satisfaction of Chief Judicial Magistrate, Aurangabad (Bihar)/concerned court, subject to the following conditions:-

- (i) Accused/Petitioner shall
cooperate in the trial and shall be



physically present on each and every date before the Trial Court till conclusion of the trial and exemption from physical appearance be allowed by the Trial Court, only on medical ground of the petitioner duly supported by the documents.

(ii) That one of the bailors shall be deponent of the present bail petition.

(Chandra Shekhar Jha, J.)

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