

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.2225 of 2023

Arising Out of PS. Case No.-209 Year-2022 Thana- RAMKRISHNANAGAR District- Patna

Sanjiv Kumar Sinha @ Sanjiv Kumar Son Of Late Hanslal Sinha R/V-
Suithar, P.S.- Parsa Bazar, District Patna At Present South Ram Krishna
Nagar, P.S.- Ram Krishna Nagar, District- Patna

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Ajay Kumar Thakur, Advocate
	:	Mr. Ritwik Thakur, Advocate
	:	Ms. Vaishnavi Singh, Advocate
For the Opposite Party/s	:	Mr. Nityanand Tiwary, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

5 19-06-2023 Heard learned counsel appearing on behalf of the
petitioner and learned APP appearing on behalf of the State.

Let the defect(s), as pointed out by the office, be
removed within a period of four weeks from today.

The petitioner seeks bail in connection with Ram
Krishna Nagar P.S. Case No.209 of 2022 registered for the
offence under Sections 376(D) and 34 of the Indian Penal Code
and Sections 25(1-b)a, 26 and 35 of the Arms Act.

The accused/petitioner is named in the F.I.R. and is in
custody since 08.05.2022.

The allegation against the petitioner is to commit



gang rape upon victim/informant aged about 24 years after calling her on his flat on false pretext of recording her songs.

Learned counsel appearing on behalf of the petitioner submitted that petitioner has been falsely implicated with present case for so many reasons, despite of the fact that victim specifically named petitioner, who committed gang rape upon her alongwith other co-accused persons on gun point. It is also supported by her statement, which was recorded under Section 164 of the Cr.P.C. Counting the reasons in support of his submission learned counsel pointed out that petitioner alongwith other co-accused persons were apprehended on spot but they were not medically examined as per provisions laid down under Section 53-A of the Criminal Procedure Code (in short Cr.P.C.). While traveling over his argument learned counsel submitted that victim and petitioner were known to each other and they interacted on several occasions prior to the occurrence in connection with recording of her song. It is pointed out that implication of this petitioner arises only due to dispute arises out of money transactions which was due to the victim out of previous recording of her songs. It is submitted that victim in her statement as recorded under Section 164 of the Cr.P.C. categorically stated that she was assaulted on her neck but on



medical examination no injury was found thereof, similarly the allegation of indiscriminate firing as to develop a sense of fear before committing offence is also appearing false as no empty cartridges or marks of firing were found at the place of occurrence. While raising his submissions to doubt the statement of victim as recorded under Section 164 of the Cr.P.C. learned counsel further relied upon the medical report of the victim which clearly shows that “no spermatozoa” was found, which makes allegation highly improbable. It is submitted that even no marks of violence was noticed in and around the private parts of the victim in the background of allegation that rape was committed by three persons. It is also submitted that as per statement of victim the petitioner was alleged to be equipped with gun, whereas as per seizure list the recovery of pistol was made. It is also submitted that even mechanical examination of pistol does not reveals indiscriminate firing. By taking note of all such submissions in totality it is submitted that statement of victim as recorded under Section 164 of the Cr.P.C. is framed and formulated and there are sufficient reasons to doubt the statement as regarding commission of crime in question. It is further submitted that victim was alleged to be rescued from the place of occurrence on the fateful night of 06.05.2022 itself but



she was medically examined on 09.05.2022 and for all these three days she was with police personnels without having any justification as to why she was not medically examined immediately to connect the petitioner with occurrence having all such available occasions. While concluding the argument, it is submitted that even in last one year, since when petitioner is in custody, charge has not been framed in this case and as such conclusion of trial is a remote aspect. It is also submitted that petitioner is a man of clean antecedent and working with Indian Navy.

Learned APP appearing on behalf of the State, while opposing the prayer for bail submitted that there is specific allegation regarding gang rape against this petitioner, which is duly supported by victim while recording her statement under Section 164 of the Cr.P.C. While opposing the prayer for bail learned APP fairly conceded the fact that despite of immediate arrest on spot of petitioner, he was not examined as per provisions laid down under Section 53-A of the Cr.P.C. He also failed to explain, why victim was examined medically after three days of the occurrence though she was immediately rescued from spot itself on the fateful night of 06.05.2022, itself.

In view of the facts and circumstances as mentioned



above and by taking note of the discrepancies of the statement of the victim as recorded under Section 164 of the Cr.P.C. and also taking note of her medical examination coupled with the fact that petitioner is in custody since 08.05.2022, where trial not appears to conclude in near future let above named petitioner is directed to be released on bail, **after framing of charge**, in connection with Krishna Nagar P.S. Case No.209 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 learned Judicial Magistrate Class-1, Patna/concerned court, subject to the following conditions:-

(i) That petitioner shall not interact with victim during the trial in any manner or to influence any witness, failing which, the State shall be at liberty to move before the Trial Court itself for the cancellation of bail bond of the petitioner.

(ii) 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.

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

(Chandra Shekhar Jha, J.)

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