

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.23665 of 2021**

Arising Out of PS. Case No.-229 Year-2018 Thana- SASARAM NAGAR District- Rohtas

TABREJ ALAM SON OF JAWED ILTAF RESIDENT OF MOHALLA-
TAKIYA, P.S.- SASARAM (MODEL), DISTRICT- ROHTAS

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR
2. KHUSHBU KUMARI DAUGHTER OF BIGU SAH RESIDENT OF
MOHALLA- NURANGANJ, P.S.- SASARAM TOWN, DISTRICT-
ROHTAS

... .. Opposite Party/s

Appearance :

For the Petitioner	:	Mr. Rajani Kant Singh, Advocate
For the State	:	Mr. Ram Naresh Ray, APP

**CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL ORDER**

2 15-03-2024 Heard learned counsel for the petitioner and learned
A.P.P. for the State.

2. This application has been filed under Section 482 of the Code of Criminal Procedure, 1973, on behalf of petitioner for quashing the order dated 25.01.2021 passed by the court of learned Additional Sessions Judge-VI, Exclusive Special Court (POCSO), Rohtas at Sasaram, in POCSO Case No.08 of 2018 arising out of Sasaram Town P.S. Case No. 229 of 2018 whereby the learned court below has dismissed the application filed on behalf of the petitioner under Section 227 of the Criminal Procedure Code for discharge of the petitioner on the ground that there is *prima facie* sufficient material on record to frame charges against this petitioner.



3. The prosecution case in brief is that on 03.02.2018 at about 10:00 AM, while the informant, aged about 13 years, was going to her relative's house, near Boliya turning Old G.T. Road, this petitioner came on motorcycle and offered her that he will drop her. The informant sat on his motorcycle and thereafter this petitioner took her to hills and gave her some water to drink. After drinking water the informant got dizziness and this petitioner took her to a room and made her talk with co-accused Ankit Kumar over mobile phone. Thereafter, co-accused Sonu Alam also came there and all the three accused persons committed rape with the informant for whole night. Thereafter, it is alleged that in the morning when the informant was taken to attend nature's call to the hills, she tried to escape and all the accused persons started chasing her but due to local people, they stopped.

4. Learned counsel appearing on behalf of the petitioner submits that the petitioner is quite innocent and has committed no offence. He further submits that he has been falsely implicated in this case with ulterior motives, only with a view to damage his social reputation. He next submits no such occurrence took place as alleged by the prosecution and the entire prosecution case is false concocted and contrary to actual



facts. As a matter of fact the petitioner neither went with the victim nor committed rape but in routine manner the police has submitted charge-sheet against the petitioner. He next submits that as per the F.I.R, three accused persons committed rape for whole night and the victim girl was medically examined but the doctor did not find any external or internal injury on any part of the body, including private parts, and the doctor has opined that it is very difficult to say whether recent intercourse has been committed and as such, the allegation of gang rape is totally false. He further submits that at the relevant time, the the petitioner was in police custody on 03.02.2018, which is evident from the letter sent by S.H.O. Sasaram (Model) P.S. to learned Spl. P.P.. It has been categorically mentioned that A.S.I. Ganesh Tiwary returned at police station at 08:00 PM with Tabrez Alam (petitioner) and on next day i.e. 04.02.2018, A.S.I. Pradeep Kumar Sasaram Town Police Station took away this petitioner from police station for enquiry, which shows that at the time of occurrence, as alleged in the F.I.R., the petitioner was in police custody.

5. On the other hand, learned A.P.P. for the State has vehemently opposed the statements made on behalf of the petitioner and supported the impugned order submitted that it is



the specific case of the prosecution that this petitioner along with other accused persons committed the heinous offence. The victim is merely 13 years and this petitioner, along with other accused persons, committed gang rape. It is next submitted that Police has recorded the statement of witnesses as well as statement of victim is also recorded under Section 164 Cr.P.C.. The victim as well as the prosecution witnesses have supported the the prosecution case. He next submits that at the stage of framing of charge, the court has to consider that whether there is *prima facie* sufficient material on record to frame the charges. Rest of the points raised by the petitioner are in the realm of defence which can only be seen at the stage of trial, after adducing evidence on behalf of the parties.

6. Having heard the rival submissions advanced by learned counsels appearing on behalf of the parties and perusing the materials available on record, this court is of the view that as per the prosecution case, this petitioner along with other co-accused persons committed gang rape with a minor victim. The prosecution case has been duly supported by the witnesses. The victim in her statement recorded under Section 164 Cr.P.C. has also supported the prosecution case. After investigation, the police submitted charge-sheet and as such there is sufficient



materials to frame charges against the petitioner. It is settled law that the defence of an accused person cannot be considered at the stage where the accused person wants to be released under Section 227 of the Criminal Procedure Code, 1973. The Hon'ble Apex Court in the case of *M. E. Shivalingamurthy versus Central Bureau of Investigation, Bengaluru* reported in (2020) 2 SCC 768 held that when an accused person requests dismissal under Section 227 of the Criminal Procedure Code, 1973, no consideration of the accused's defence is to be made. At this stage, only the facts mentioned in the F.I.R./Complaint or the materials collected during course of investigation along with the charge-sheet are to be seen. If the materials placed before the court disclose grave suspicion against the accused, which has not been properly explained, the court will be fully justified in framing of charges and proceeding with the trial.

7. In view of the aforesaid facts and circumstances, this court does not find any illegality, irregularity or error in the impugned order.

8. Accordingly, this application is dismissed.

(Prabhat Kumar Singh, J)

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