

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.28389 of 2024

Arising Out of PS. Case No.-18 Year-2021 Thana- MAHILA PS District- Gaya

Kamala Kant Prasad @ Kamalakant Prasad Son of Late Vishwanath Prasad
Resident of Mohalla- Lavkush Nagar, Road No. 2, Purvi Gola Road, Near
Machli Talab, Ward No. 27, P.S. Rupaspur, District- Patna at present Dy.SP.
(Suspended) having office at Block-C, Sardar Patel Bhawan, Patna

... .. Petitioner/s

Versus

The State of Bihar Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mrs.Vaishnavi Singh, Advocate

For the Opposite Party/s : Mr.Binay Krishna, Spl. PP

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY

ORAL ORDER

5 13-09-2024 Heard Mrs. Vaishnavi Singh, learned counsel for the
petitioner and Mr. Binay Krishna, learned Special P.P.

2. The petitioner is in judicial custody in connection with POSCO P.S. Case No. 69 of 2021 corresponding to Gaya Mahila P.S. Case No. 18 of 2021 for the offence punishable under Sections 376(2)(a)(iii)/376(2)(b)/376 (3) of the Indian Penal Code and 6/9(i)(c) of POSCO Act also under section 3(2)(v)3(1)(r)(s)(w)(2) of SC/ST Act lodged on 27.05.2021 by the informant, Sanjay Kumar.

3. As per the prosecution story, the informant who is brother of the victim girl 'X' complained that his sister told her that during 2017 Dussehra festival, while the petitioner was posted as Dy S.P., Head Quarter, Gaya forcibly committed rape



upon her in his Government quarter in the night where she had stayed for a night prior to coming to Patna to serve as a Maid to the petitioner's wife. The further allegation is that the date of birth of his sister being 16.05.2003, she was minor at the time of occurrence, she narrated her ordeal to her brother followed by the present FIR in 2021.

4. Learned counsel for the petitioner submits that though the occurrence is of the year 2017, FIR came to be lodged in the year 2021, for the present, she will not go through the facts of the case but would like to present before the Court the development that has taken place pursuant to the petitioner surrendering before the Court on 27.02.2024.

5. It is her submission that the charges have been framed in the matter but pursuant to the petition filed under section 482 of the Cr.P.C. vide Cr. Misc. No. 38972 of 2024 (Kamala Kant Prasad @ Kamalakant Prasad) vs. the State of Bihar and another, a coordinate bench on 08.08.2024 has stayed the further proceeding pending before the competent Court at Gaya, in connection with Gaya Mahila P.S. Case No. 18 of 2021.

6. The order dated 08.08.2024 read as follows:

Heard the parties.



2. *It has been submitted by the learned counsel for the petitioner that during pendency of this case charges has been framed.*

3. *In view of the law laid down by the Hon'ble Supreme Court in the case of **Anand Kumar Mohatta Vs. State (NCT of Delhi)** reported in (2019) 11 SCC 706, the petitioner is given liberty to challenge the order of framing of charge by filing an application for amendment*

4. *Issue notice to opposite party no. 02 under registered cover with A/D as well as ordinary process for which requisites etc. must be filed within a week from today.*

5. *Call for the legible photocopy of the case diary from the concerned Court below in connection with*



Gaya Mahila P.S. Case No. 18 of 2021.

6. List this case after ten weeks.

7. During pendency of this application, further proceedings of the concerned Court below in connection with Gaya Mahila P.S. Case No. 18 of 2021 shall remain stayed.

8. It is made clear that stay of further proceedings will not come in the way of consideration of bail application of the petitioner.

8. Mrs. Singh submits that he has already remained in custody for more than six months, charges have been framed but as the proceeding stands stayed, he will rot in jail. It is her further submission that the petitioner will be diligently appearing in trial.

9. Learned Special P.P. though opposes the prayer for bail concedes that now the trial has been stayed, there is no likelihood of it being proceeded further till an order is passed by the coordinate bench.



10. As recorded above, the opposite party no.2 was noticed on 21.06.2024 and thereafter, office note shows that it has been received by the brother of the said opposite party but there is no appearance from her side.

11. Taking into account the aforesaid facts as also the custody period, charges have already been framed but the trial has been stayed pursuant to the order passed by the coordinate bench on 08.08.2024 in Cr. Misc. No. 38972 of 2024, an undertaking has already been given by the learned counsel for the petitioner that he will diligently appearing in trial, this Court is inclined to extend him the privilege of bail with conditions.

6. Let the petitioner be released on bail on furnishing bail bond of Rs. 10,000/- (Ten thousand) with two sureties of like amount each to the satisfaction of learned A.D.J.-VI, POCSO, Gaya, in connection with POSCO P.S. Case No. 69 of 2021 corresponding to Gaya Mahila P.S. Case No. 18 of 2021 subject to the following conditions:

(i) one of the bailor should be the family member/relative of the petitioner who shall provide official document to show his bona fide;

(ii) the petitioner shall appear on each and every date



before the Trial Court and failure to do so for two consecutive dates without plausible reason will entail cancellation of his bail bond by the Trial Court itself;

(iii) the petitioner shall in no way try to induce or promise or threat the witnesses or tamper with the evidences, failing which the State shall be at liberty to take steps for cancellation of the bail bonds;

(iv) the petitioner shall desist from committing any criminal offence again, failing which the State shall be at liberty to take steps for cancellation of his bail bonds.

(Rajiv Roy, J)

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