

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.44629 of 2024

Arising Out of PS. Case No.-490 Year-2023 Thana- KHAIRA District- Saran

Mithlesh Kumar @ Tipu @ Mithlesh Kumar Sharma, aged about 20 years,
Gender-Male, S/O Baijnath Sharma, R/O Village- Koreya, P.S- Khaira, Distt.-
Saran at Chapra.

... .. Petitioner

Versus

1. The State of Bihar.
2. Shanti Devi, W/O Late Haricharan Rai, R/O Village- Koreya, P.S- Khaira,
Distt.- Saran at Chapra.

... .. Opposite Parties

Appearance :

For the Petitioner	:	Mr. Ram Binod Singh, Advocate
For the State	:	Mr. Bhanu Pratap Singh, A.P.P.

**CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH
SINGH**

ORAL ORDER

3 22-08-2024 Heard learned counsel for the petitioner and learned
A.P.P. for the State.

2. The petitioner seeks bail in connection with Khaira
P.S. Case No. 490 of 2023 dated 24.12.2023 registered for the
offences punishable under Section 376DA of the I.P.C., Sections
4 and 6 of the POCSO Act and Section 67 of the I.T. Act.

3. As per the prosecution case, the petitioner and the co-
accused persons are alleged to have committed rape on the
informant's grand-daughter and made a video of it and
threatened to make the same viral.

4. Learned counsel for the petitioner has submitted that
the petitioner is innocent and has falsely been implicated in the



present case. It is submitted that as per the F.I.R., when the video of the occurrence was made by the accused persons then the F.I.R. has been lodged but in the entire case diary, there is no reference of any video being provided by any person to the police nor it has been recorded by the police that they recovered any video and the police submitted charge sheet under Section 67 of the I.T. Act. There is contradiction in the statements of the victim recorded under Section 161 of the Cr.P.C. as well as 164 of the Cr.P.C. The victim was examined on 25.12.2023 by the Medical Board and the doctor has found the age of the victim as 18 years and the injury was found on her whole body and private part, however, the Medical Board has found strong evidence of intercourse with the victim within five to seven days. It is highly unbelievable that if 11 persons will commit rape on the victim, she will not sustain any injury on her body. It is submitted that the occurrence took place on 18.12.2023 and the F.I.R. has been lodged on 24.12.2023 after a delay of six days for which no explanation has been given by the prosecution. The co-accused Praveen Kumar was arrested on 24.12.2023 and in his confessional statement, he has stated that on 18.12.2023 while he was going towards pond, he saw that the argument was going on between the petitioner and the victim



and thereafter, the petitioner went away and finding the victim alone, he alongwith some friends took the victim towards field beside the *Korea Pokhar* and all of them committed rape on her one by one. Other co-accused persons have also given their confessional statement making the same averment but none of them have mentioned the name of the petitioner as co-accused. The petitioner has clean antecedent as stated in paragraph no. 3 of the bail application. The petitioner is in custody since 26.12.2023.

5.Learned A.P.P. for the State has opposed the prayer for bail petition of the petitioner and submitted that the victim has supported the facts in her statement recorded under Sections 161 of the Cr.P.C. as well as 164 of the Cr.P.C. The Medical Board has assessed the age of the victim as 18 years and suggests that there is strong evidence of intercourse with the victim within five to seven days. It is further submitted that the bail applications of other co-accused persons, namely, Rajan Kumar and Sonu Kumar @ Jaddu have already been rejected by the Bench of this Court vide Cr. Misc. No. 31343 of 2024 under order dated 01.05.2024 and Cr. Misc. No. 30831 of 2024 under order dated 11.07.2024 respectively.

6. Considering the aforesaid facts and circumstances of



the case as well as the heinous nature of allegation against the petitioner, this Court is not inclined to grant bail to the petitioner and the same is rejected in connection with Khaira P.S. Case No. 490 of 2023, pending in the court of learned Additional Sessions Judge-VIth-cum-Special Judge, POCSO, Saran at Chapra.

7. The learned court below is directed to expedite the trial of the petitioner at the earliest.

(Chandra Prakash Singh, J)

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