

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL MISCELLANEOUS No.76039 of 2023**

Arising Out of PS. Case No.-609 Year-2023 Thana- SAHARSA SADAR District- Saharsa

Anita Madam @ Anita Kumari, aged about 46 yeas, Gender-Female, Wife of Pradip Kumar Mishra R/o Radha Nagar, Paswan Tola, ward no. 13, P.S. - Saharsa Town, Distt. - Saharsa. At present R/o Menha Panchgachhia, at Shanti Niketan Shikshan Sansthan, P.S. - Bihra, Distt. - Saharsa

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

with

**CRIMINAL MISCELLANEOUS No. 85063 of 2023**

Arising Out of PS. Case No.-609 Year-2023 Thana- SAHARSA SADAR District- Saharsa

Sunit Kumar Biswas @ Sumit Kr @ Biswas @ Smrat Biswas @ Samrat Biswas, Aged about 33 years, Male, S/O Ajit Kumar Biswas R/o Mohalla-Gautam Nagar, Gangjala, Ward No.12, P.S-Saharsa, District-Saharsa.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

**Appearance :**

(In CRIMINAL MISCELLANEOUS No. 76039 of 2023)

For the Petitioner/s : Mr. Ramakant Sharma, Sr. Advocate  
: Mr. Rakesh Kumar Sharma, Advocate  
For the Opposite Party/s : Mr. Gulnar Begum

(In CRIMINAL MISCELLANEOUS No. 85063 of 2023)

For the Petitioner/s : Mr.Bindhyachal Singh, Sr. Advocate  
: Mr. Aditya Raj, Advocate  
: Miss. Nikita Mittal, Advocate  
: Mr. Subham Singh, Advocate  
For the Opposite Party/s : Mr.Md. Mushtaque Alam  
For the Informant : Mr. Ashar Mustafa, Advocate  
: Mr. Murad Ashraf, Advocate  
: Mr. Abu Nasar, Advocate

**CORAM: HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA**

ORAL ORDER

4      15-02-2024      Heard learned counsel for the petitioners, learned counsel for the Informant, learned APP for the State and perused the case diary.

2. The petitioners are in custody in connection with



Saharsa P.S. Case No. 609 of 2023 registered for an offence punishable under Sections 376 of the Indian Penal Code and Sections 4 & 8 of the POCSO Act, later on Sections 376(3)/120(B) of the IPC along with Sections 04, 06,10 and 17 of the POCSO Act were added in the charge sheet.

3. As per allegation in the FIR, mother of the victim submitted a written report addressed to the In charge of Sadar Police Station, Saharsa on 28.08.2023 alleging therein, inter alia, that her daughter (victim) at present aged about 16 years was admitted in April, 2014 in Class-2 at Shanti Niketan Academy, Gautam Nagar, Saharsa and till 2018 July she was continued her study in this school and later on, she joined other branch of the school namely, Shanti Niketan Shikshan Sansthan on 01.08.2018 and in that course she became unwell and on the advise of the victim's friend informant admitted her in other school from 5th June, 2019. Further it is stated that she was admitted in Akash Institute, Kankarabangh, Patna for NEET Examination and stayed at Parwati Girls Hostel. It is further stated that all of sudden she became unwell on 23.08.2023 at hostel and said information was conveyed to the informant from the owner of hostel namely, Manoranjan Babu and also informed that her daughter was admitted at Novel Hospital. On



receiving said information the informant along with her husband went to Patna on a private car and also took her to the doctor who stated about the status of her daughter and also advised her to keep her in the treatment of senior Psychologist namely, Dr. Anand Kumar Verma. Further, it is stated that on the advise of the doctor she approached Dr. Anand Kumar Verma on 24.08.2023 for treatment of her daughter and in course of treatment when doctor was making inquiry from her daughter, then in presence of informant she disclosed that in course of her study at Shantil Niketan Shikshan Sansthan, the younger son of Director Ajit Kumar Vishwan namely, Sumit Kumar Vishwan called her in the room situated beside the laboratory through Anita Madam, the petitioner and as soon as she entered into the room, the Madam (petitioner) got the room locked from outside by keeping both of them alone in room and thereafter, she used to guard the room. It is alleged that after closure of room Sumit Kumar Vishwas @ Smart Vishwas terrorized and tortured her and sexually assaulted her and also got prepared the video and threatened her to make the video viral in case she disclosed this fact to anyone and make her socially demoralized and due to such threatening she went in depression and her study also started hampering. After making inquiry the doctor prescribed



medicine and advised the informant to keep her daughter at home under her supervision and thereafter, the informant returned to Saharsa and gave written report.

4. Learned senior counsel for the petitioners submits that petitioners have falsely been implicated in this case. They further submits that the date of occurrence in the year 2018 whereas the FIR was registered in the year 2023 after disclosure by the victim before the doctor where the victim has not stated about the involvement of these petitioners rather she categorically said that such type of incident had taken place in course of examination or completion of homework by the younger son of the Director of the school. They further submitted that a letter of Education Department which stated that the victim was studying in a government school and her school transfer certificate is of 31.01.2020 which makes it clear that she was studying in a government school and not in the school of the petitioners. The petitioners have also clean antecedent. The FIR was submitted in 2023 whereas the time of occurrence of the offence is between 2018 to 2020 and there is no reason specified by the victim as to why there was delay in the filing of the FIR. They further stated that as per the statement of the victim, the place which she stated to be a



Library is not a Library but Kitchen which is also mentioned by the Investigation Officer of this case. Learned senior counsel for the petitioner submitted that Anita Madam cannot be accused in case of attempted rape. Petitioners are in custody since 12.10.2023 and 28.08.2023 respectively.

5. However, learned counsel for the Informant as well as learned APP for the State opposes the prayer for regular bail of the petitioners and submits that petitioners have direct involvement in the present case.

6. Learned counsel for the informant further submitted that the offence is very serious in nature. The main assailant attempted to rape the victim for more than thirty minutes and petitioner Anita Madam was also an assailant as she brought the victim with her for some help and later on locked the victim with the assailant inside the said Library. Considering the contention raised by the counsel for the petitioners, the counsel for the Informant submitted that in POCSO Act an abettor is also an accused and it is not a gender specific act, thus, petitioner Anita Madam is also an accused in this case. He further submitted that trial has not concluded yet and the fact that this crime is very serious in nature as the victim is a minor girl, at this juncture, the consideration of bail in a POCSO case



is against the society at large. The informant further submitted that the main assailant also threatened the victim that he has a video of the said act and he will circulate in social Media. The FIR was filed with a delay as the victim was a minor child and could not apprehend as to what was wrong and the offence caused great mental trauma inside her mind.

7. Perused the first information report, case diary and statement recorded under Sections 161 and 164 of the Cr.P.C. under deposition of witnesses. Learned senior counsel for the petitioners relied on two judgments, i.e., **Kamaljit Kaur versus The state of Punjab (Special Leave to Appeal (Crl) No.15265 of 2023)** and **Priya Patel vs State of MP & Anr (AIR 2006 SC 2639)** for supports the case of the petitioner (Anita Madam @ Anita Kumari). On perusal of the Annexure-D series, it appears that the trial is in advanced stage. The counter affidavit filed by the father of the victim states in Annexure-A the statement of the victim under section 164 of the Cr.P.C. wherein she has specifically stated the involvement of the petitioner before Magistrate and she has again through a proceeding in a camera given a deposition vide Annexure-E, the details of the ordeal before Special Judge, POCSO. The informant and the father of the victim also give a deposition supporting the case of the



victim before the Special Judge, POCSO. The case diary in para nos. 30, 44, 46, 52, 57, 64, 72, 73, 79 and 93 supports the prosecution case. The charge sheet have been submitted on 27.10.2020 under Section 376(3)/120(B) of the IPC along with Sections 04,06,10 and 17 of the POCSO Act against the accused persons and the cognizance has been taken against the sections stated above.

8. Under these circumstances, in my view, this present case is a very serious in nature, and the victim being a minor girl who had to go through this ordeal is actually very heinous for the society at large. The statement of the victim and mother of the victim has been given under Sections 161 and 164 of the Cr.P.C. also supports the case of the prosecution and all this has happened in a school where the children grow and nurture themselves in presence of the teachers who are like guardians to them. In this present matter, the teacher, petitioner Anita Madan was the abettor along with the main assailant who is younger son of the principal of the school. The petitioner, namely, Sunit Kumar Viswas @ Sumit Kr. @ Biswas @ Smrat Biswas @ Samrat Biswas is the main assailant in this case who attempted rape on a minor girl child. The statement of the victim under Section 164 of the Cr.P.C. clearly indicates that the main



assailant tried to commit rape upon the victim for more than thirty minutes and this happened more than once. This whole matter caused a great mental trauma in the mind of girl child who has not even attain majority at that time and subsequently the victim went into depression. The chargesheet is submitted taking cognizance this case under 376(3)/120(B) of the IPC along with Sections 04, 06,10 and 17 of the POCSO Act and the trial is still going on. Considering the case at hand and the gravity of offences committed by the petitioners, I am not inclined to grant bail to the petitioners.

9. Prayer for regular bail of the petitioners is hereby rejected.

10. However, the trial court is directed to conclude the trial preferably within stipulated period prescribed by the statute.

**(Ramesh Chand Malviya, J)**

Brajesh Kumar/-

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