

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.5771 of 2025

Arising Out of PS. Case No.-406 Year-2024 Thana- PARBATTa District- Khagaria

Gaurav Kumar, S/o Dablu Sah, Resident of village-Morkhai Tola Kabela,
Ward No.-9, P.S.- Parbatta, District-Khagaria (Bihar)

... .. Petitioner

Versus

1. The State of Bihar
2. Sunil Sharma, S/o Dashrath Sharma, Resident of village-Morkhai Tola Kabela, Ward No. -9, P.S.- Parbatta, District-Khagaria (Bihar)

... .. Opposite Parties

Appearance :

For the Petitioner/s	:	Mr. Shailendra Kumar Singh, Advocate Ms. Seema Kumari, Advocate
For the State	:	Mr. Narsingh Tanti, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

6 05-08-2025 Heard learned counsel for the petitioner and

learned Additional Public Prosecutor for the State.

2. The accused/petitioner seeks bail in connection

with Parbatta P.S. Case No.406 of 2024 registered for the

offences punishable under Sections 65(1), 352, 352(2), 3(5)

of the Bhartiya Nyaya Sanhita (for short ‘B.N.S.’) and Section

4 of the Protection of Children from Sexual Offences Act,

2012 (in short ‘POCSO Act’).

3. The accused/petitioner is named in the FIR and

is in custody since 06.10.2024.

4. Allegation against the petitioner is to commit



rape/penetrative sexual assault upon minor daughter of the informant aged about 15 years, first time after making her unconscious while she was working in field and, thereafter, repeatedly on several occasions.

5. It is submitted by learned counsel appearing for petitioner that as the marriage between the parties could not solemnized for certain social reasons, therefore, the present false case was lodged against petitioner. It is pointed out that the victim upon medical examination found between the age group of 16-17 years and, therefore, if marginal benefit of plus (+) minus (-) two years be given due to radiological examination in view of **Rajak Mohammad vs. State of H.P.** as reported in **(2018) 9 SCC 248** then, certainly, the victim appears major on the date of occurrence and, therefore, lodging of present case under POCSO Act in itself is bad in the eyes of law. It is pointed out that upon medical examination, nothing found incriminating, which may suggest that occurrence of rape/penetrative sexual assault as alleged was committed upon informant, except upon UPT, the victim was found pregnant. It is pointed out that pregnancy of victim



was medically terminated by mother of victim herself and the petitioner was no concern thereof. While concluding argument, it is submitted that investigation of this case is already completed, for which, charge-sheet has submitted and, as such, there is no chance of tampering with the evidence and moreover despite of custody of one year of petitioner, even charge could not framed in this matter, making, conclusion of trial a remote aspect in view of Section 35(2) of the POCSO Act and on this ground alone, the petitioner deserves bail.

6. Learned APP while opposing the prayer of bail submitted that the victim while recording her statement under Section 164 of the CrPC categorically stated that she was raped by this petitioner while she was working in field. It is pointed out that the plea of love affairs is an afterthought as to mitigate the allegation *qua* rape/penetrative sexual assault. It is submitted that it is a case of aggravating sexual assault as the offence was committed repeatedly due to which, the victim, who was minor aged about 15 years becomes pregnant.



7. Considering the aforesaid factual submissions and by taking note of fact as victim has categorically supported the occurrence through her statement recorded under Section 164 of the CrPC that she was repeatedly raped by the petitioner, making her pregnant *prima facie* suggesting the allegation of rape/penetrative sexual assault in its aggravating form, accordingly, the prayer of bail of petitioner stands rejected herewith, for the present.

8. As petitioner remained in custody since 06.10.2024, the learned trial court is directed to expedite the trial and conclude the same within time frame as prescribed under Section 35(2) of the POCSO Act.

(Chandra Shekhar Jha, J.)

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