

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.62847 of 2024

Arising Out of PS. Case No.-737 Year-2023 Thana- FATEHPUR District- Gaya

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1. Mithlesh Yadav @ Mithlesh Kumar Son of Ram Chandar Yadav @ Ramchandra Yadav village- Dharhara kala, Ps- Fatehpur, Dist- Gaya
 2. Lalu Yadav @ Lallu Kumar son of Chandar Yadav @ Chandra Yadav village- Dharhara kala, Ps- Fatehpur, Dist- Gaya

... .. Petitioner/s

Versus

1. The State of Bihar
2. Sangita Kumari Daughter of Raj Kumar Mistri village- Dharhara Kala, Ps- Fatehpur, Dist- Gaya

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Aryan Singh, Advocate
For the State	:	Mr. Binod Kumar, APP
For the Informant	:	Mr. Pawan Kumar, Advocate
		Mr. Dhaneshwar, Advocate

CORAM: HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY
ORAL ORDER

5 27-01-2025 Heard learned counsel for the petitioners and learned APP for the State.

2. The petitioners have prayed for grant of bail in connection with Fatehpur P.S. Case No. 737 of 2023 registered under sections 341, 354(B), 448, 504, 506 and 34 of the Indian Penal Code and Section 67 of the Information Technology Act. Further section 376 of the IPC and Sections 4 and 6 of the POCSO Act were added.

3. The case of the prosecution is that informant/victim was having affair with one Nankesh Yadav.



He has posted her photograph in his story on facebook but victim did not file any application regarding this occurrence. On 7.10.2023 Nankesh gave her a mobile and asked her to talk him failing which she will have to face dire consequences. It is further alleged that the petitioners have also come with him. The victim has submitted the mobile in the police station. On 08.10.2023 at about 10:30PM when the informant/victim had gone to attend the call of nature, she found that one Bullet bike was standing in her courtyard. These petitioners along with Nankesh Yadav was sitting on that bike. As the informant tried to run away, petitioner Mithlesh Yadav caught her and pulled her in courtyard. Petitioner Lalu Yadav gagged her mouth and started touching her private parts. Nankesh attempted to disrobe her on this informant/victim raised alarm and her mother came after this, they fled away from there. It has also been submitted that the viral story is being attached with the FIR.

4. Learned counsel for the petitioners submits that the petitioner are innocent and have committed no offence. They have falsely been implicated in this case. In this case, victim has given her statement under Section 164 of the Cr.P.C. wherein she has stated that Nankesh Yadav has created



a fake facebook I.D. and has made viral her private photographs. It has also been submitted during course of investigation, the brother of the informant has given his statement under Para-49 of the diary wherein he has stated the informant/victim and Nankesh were having affair outside marriage and that he has also objected the same but the victim was bent upon to marry with Nankesh. This witness has stated that the name of these petitioners has been added due to dirty village politics. This statement of the brother of the victim is further supported by the two witnesses, namely, Gulabi Devi para-55 and witness Sukhdev Mistri in para-6 of the case diary. The statement of the victims recorded under Sections 161 and 164 of the Cr.P.C. seems improvement as she has not stated regarding rape in her F.I.R. by these petitioners. The statement of the brother of the informant/victim and other witnesses also goes to support that these petitioners were not involved in the act. A statement has been made in para-3 of this petition that the petitioners have got no criminal antecedent. Moreover, they are languishing in judicial custody since 02.06.2024.

5. The application for bail is opposed by learned APP for the State and learned counsel for the informant and



submitted that from perusal of para-4 of the statement of victim recorded under Section 164 of the Cr.P.C. it is clear that all the accused persons committed rape with her. In this case, victim has also given her statement under Section 161 of the Cr.P.C. wherein she stated that she was being raped by all three accused persons. In this case, the FIR was registered on 09.10.2023 and the statement of the victim under Section 161 of the Cr.P.C. was recorded on the same day. Later on, when her statement was recorded under Section 164 of the Cr.P.C., she has reiterated her statement made under Section 161 of the Cr.P.C. In the cases of rape, the statement of victim is of much importance. The statement of the victim under Section 164 of the Cr.P.C. was recorded on 06.11.2023 but her prior statement is the F.I.R. which was recorded on 09.10.2023 these two statements in light of the opinion of the doctor, doctor has not found any sign of rape but he has opined that rape cannot be ruled out.

6. Having heard learned counsel for the parties and considering the facts and circumstances of this case, the Court is inclined to enlarge the petitioners on bail. The above named petitioners are directed to be enlarged on bail in connection with Fatehpur P.S. Case No. 737 of 2023 on each of them



furnishing bail bond of Rs. 10,000/- (Rupees ten thousand) with two sureties of the like amount each to the satisfaction of the learned Additional Sessions Judge-VI-cum-Special Judge of POCSO Act, Gaya.

(Ashok Kumar Pandey, J)

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