

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.65363 of 2025

Arising Out of PS. Case No.-305 Year-2024 Thana- AANDAR District- Siwan

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1. Anwar Miya @ Anwar Ansari S/O Doma Miya @ Dosh Mohammad Resident of Village- Bishunpura, P.S- Banakta (Rampur), Distt.- Deoria (UP).
 2. Rabu Khatoon @ Rahbu Khatoon D/O Ful Mohammad @ Ful Mohammad Miya @ Ful Mohammad Ansari R/O Village- Banthu (Bandhu) Salona, P.S- Andar, Distt.- Siwan.

... .. Petitioners

Versus

1. The State of Bihar
2. Najbun Khatoon W/O Mohammad Nijamuddin R/O Village- Banthu Salona, P.S- Andar, Distt.- Siwan.

... .. Opposite Party

Appearance :

For the Petitioner/s	:	Mr.Sanjay Kumar Pandey, Advocate
For the Opposite Party/s	:	Mr.Ashok Kumar Singh, APP
For the Informant	:	Ms. Anupama, Advocate

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

4 09-12-2025 Heard learned counsel appearing on behalf of the petitioners, learned A.P.P. for the State and learned counsel for the informant.

2. The accused/petitioners seek bail in connection with Andar P.S. Case No. 305 of 2024 registered for the offences under Sections 64(1), 61(2) of the Bhartiya Nyay Sanhita, 2023 (in short, the 'B.N.S.') and section 3/4 of the POCSO Act.

3. The accused/petitioners are named in the First Information Report and is in custody since 05.04.2025.



4. Allegation against the petitioner no. 1 is to commit penetrative sexual assault upon minor daughter of the informant aged about 17 years, where petitioner no. 2 being sister-in-law usually called the victim in her house in night.

5. It is submitted by learned counsel appearing on behalf of the petitioners that rape as alleged was caused by Ful Mohammad, who is not petitioner for the present. It is submitted that the victim identified Ful Mohammad in the photograph in which he has beard on his face and she pointed out that the person in photograph is the father of her child being a dumb victim.

6. It is submitted that there is no allegation against petitioner no. 1 as to commit sexual assault and he was only alleged to drop Ful Mohammad to her home on certain occasion. It is submitted that as per DNA report, the petitioner is not the father of the child and, therefore, the allegation of rape is also not convincing against him.

7. Learned A.P.P. for the State duly assisted by Ms. Anupama, learned counsel appearing for the informant, while opposing the prayer of bail of the petitioners, submitted that



petitioner no. 2, who is Bua of the victim usually called her in night to her home where she was raped by Ful Mohammad. It is submitted that mismatch of DNA does not lead to conclusion *ipso facto* that rape as alleged was not committed by petitioner no. 1.

8. In view of aforesaid factual submission and by taking note of the fact as allegation qua sexual assault is not available against petitioner no. 1 out of statement of victim recorded under section 183 of the B.N.S.S., where he also not appears biological father of the child of the victim as per DNA report, coupled with the fact that petitioner no. 1, who has no criminal antecedent, remains in custody since 05.04.2025, accordingly, above-named petitioner no. 1 namely, Anwar Miya @ Anwar Ansari is directed to be released on bail, furnishing bail bond of Rs. 10,000/- (Rupees Ten Thousand only) with two sureties of the like amount each to the satisfaction of learned Special Judge, POCSO, Siwan/concerned court, in connection with Andar P.S. Case No. 305 of 2024, subject to the condition as laid down under Section 437(3) Cr.P.C/Section 480(3) of the Bhartiya



Nagarik Suraksha Sanhita (in short “B.N.S.S.”).

9. So far as petitioner no. 2 is concerned, she was specifically identified by the victim, who is a dumb girl, that she usually called her in night, suggesting her active involvement in crime in question, accordingly, prayer of bail of petitioner no. 2 namely, Rabu Khatoon @ Rahbu Khatoon, stands rejected.

(Chandra Shekhar Jha, J)

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