

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.74191 of 2024

Arising Out of PS. Case No.-331 Year-2024 Thana- BODHGAYA District- Gaya

Manish Kumar, aged about 19 years, Gender-Male, S/O Jamundar Yadav @
Jamundar Yadav, R/O Village- Baijan Bigha, P.S- Magadh University,
District- Gaya

... .. Petitioner

Versus

- 1. The State of Bihar.
- 2. XYZ, aged about 18 years, Female, D/o- Ram Janam Yadav, R/O Village-
Baijan Bigha, P.S.- Magadh University, Dist- Gaya

... .. Opposite Parties

Appearance :

For the Petitioner : Mr. Ramakant Sharma, Sr. Advocate and Mr.
Rakesh Kumar Sharma, Advocate
For the O.P. No. 2 : Mr. Bharat Bhushan, Advocate
For the State : Mr. Zainul Abedin, A.P.P.

CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH
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ORAL ORDER

5 23-04-2025 Heard learned senior counsel for the petitioner,

learned counsel for the opposite party no. 2 and learned A.P.P.

for the State.

2. The petitioner seeks bail in connection with

Bodhgaya P.S. Case No. 331 of 2024 dated 06.07.2024

registered for the offences punishable under Sections 126(2),

115, 64(1) read with Section 34 of B.N.S., 2023 and Sections 4

and 8 of the POCSO Act.

3. As per the prosecution case, the opposite party no.

2 was in love with the petitioner for the last eight months. In the

meantime, the petitioner about two months ago, took the



opposite party no. 2 to 'Budha Hotel' in Bodhgaya, however, she was not ready to go to the Hotel but he assured her that he would not do anything wrong against her and only he wanted to talk to her. Thereafter, the petitioner took her in the hotel and gave her a Chocolate and after eating the Chocolate, she became unconscious and thereafter he committed wrong against her. Thereafter, he again took her to 'Kalyani Hotel', Bodhgaya by saying that he would marry with her in the Court. He again committed sexual assault on her. It is further alleged that when the opposite party no. 2 became pregnant, the petitioner refused to marry her and on 06.07.2024 at about 3.00 P.M., the sister-in-law (Bhabhi) and his brother Rakesh Kumar called the opposite party no. 2 to their house and assaulted her and forcibly tried to give medicine but anyhow the opposite party no. 2 fled away from there and lodged the F.I.R.

4. Learned senior counsel for the petitioner has submitted that the petitioner is innocent and has falsely been implicated in this case. It is further submitted that as per the F.I.R., there was love affair between the parties for the last eight months. It is further submitted that the opposite party no. 2 was medically examined in '*Prabhawati Hospital*', Gaya and 'no marks of violence on her face, neck, breast, abdomen and pelvis'



was found by the doctor and ‘no alive or dead spermatozoa seen in the provided vaginal swab smear’ and there was no definite evidence of sexual intercourse and her age was assessed to be 17 to 18 years. The victim in her statement recorded under Section 180(3) of the B.N.S.S., she has not stated that on which date she was first taken to hotel nor she has stated the room number. It is further submitted that the petitioner has falsely been implicated in the present case only with a view to put pressure on the petitioner to perform marriage with her and when the marriage was not solemnized, she has filed the present false case against the petitioner. Learned senior counsel for the petitioner has relied upon the judgments in the case of (i) *Harbanslal Sahnial and another Vs. Indian Oil Corpn. Ltd., and others, reported in A.I.R., 2003 SC-1639*, (ii) *Deepak Gulati Vs. State of Haryana, reported in (2013)7 SCC 675*, (iii) *Pramod Suryabhan Pawar V. State of Maharashtra and another, passed in Criminal Appeal No. 1165 of 2019 (Arising out of SLP (Crl) No. 2712 of 2019, dated 21.08.2019*, (iv) *Jitu Yadav @ Jitendra Kumar Vs. State of Bihar, passed in Criminal Appeal (DB) No. 245 of 2022 dated 20.10.2022* and (v) *Jaya Mala V Home Secretary, Government of Jammu and Kashmir and others, reported in A.I.R. 1982 SC 1297* wherein



the Hon'ble Apex Court has held in paragraph no. 9 of the said judgment. “ ***However, it is notorious and one can take judicial notice that the margin of error in age ascertained by radiological examination is two years on either side.***” The petitioner has clean antecedent as stated in paragraph no. 3 of the bail petition. He is in custody in this case since 20.07.2024.

5. Learned A.P.P. for the State and learned counsel for the opposite party no. 2 have vehemently opposed the bail petition of the petitioner. Learned counsel for the opposite party no. 2 has further submitted that the petitioner has committed rape on the minor victim girl. It is further submitted that the victim girl in her statement recorded under Section 183 of B.N.S.S., has supported the prosecution case. Further, as per medical report there is definite evidence of sexual intercourse, however, rape cannot be denied. Learned counsel for the opposite party no. 2 has further submitted that the aforesaid rules which have been relied by the learned senior counsel for the petitioner does not help the contention of the learned senior counsel for the petitioner.

6. Considering the aforesaid facts and circumstances of the case and finding substance in the contention of the learned counsel for the opposite party no. 2 as well as the



specific and 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 Bodhgaya P.S. Case No. 331 of 2024, pending in the court of learned Additional Sessions Judge-VI-cum-Special Judge, POCSO Act, Gaya.

7. The application stands rejected.

8. The learned court below is directed to expedite the trial of the petitioner and conclude the same at the earliest.

(Chandra Prakash Singh, J)

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