IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.51516 of 2026

CNR No. BRHC010736582026

Arising Out of PS. Case No.-268 Year-2024 Thana- GARKHA District- Saran

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1. Mohit Kumar @ Mohit Kumar Sah S/O Bhushan Sah R/O Vill. and P.O.- Rampur, P.S.- Goura, Dist.- Saran- 811442
2. Dipu Kumar @ Dipu Kumar Sah S/O late Birendra Sah R/O Vill. and P.O.- Rampur, P.S.- Goura, Dist.- Saran- 811442

... ... Petitioner/s

Versus

The State of Bihar

... ... Opposite Party/s

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Appearance :
For the Petitioner/s : Mr.Jeetendra Narayan, Advocate
For the Opposite Party/s : Mr.Binod Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH

ORAL ORDER

4 27-10-2026 Heard Mr. Jeetendra Narayan, learned counsel appearing on behalf of the petitioners and Mr. Binod Kumar, learned APP appearing on behalf of the State.

2. The petitioners apprehend their arrest in connection with Garkha P.S. Case No. 268 of 2024, registered under Sections 363 and 366 of the Indian Penal Code.

3. As per the allegation made in the FIR, which is against unknown, the informant gave his written report on 11.05.2024, wherein he has alleged that his daughter-in-law, aged about 24 years went to attend nature's call in the field, south of the house and thereafter she went missing on 10.05.2024. It is further alleged that there was no dispute with

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her in the family and she lived in the house in a proper manner. During the course of investigation, the name of the petitioners surfaced on the basis of the statement of the survivor recorded under section 161 Cr.P.C./180 of BNSS on 14.05.2024. She named one co-accused namely Chandan Kumar and these two petitioners namely Dipu Kumar Sah and Mohit Kumar Sah who had allegedly threatened to leak videos and photographs taken before her marriage if she fails to talk to them. It is further alleged that on 09.05.2024 Chandan Kumar asked her to meet at Paterha Market. She further stated that on 11.05.2024 at about 01:00 hours she left her house and met the three accused at the said market, where they made her inhale a substance and took her away in a vehicle and thereafter she was left at her parental house on 13.05.2024.

4. Learned counsel appearing on behalf of the petitioners submitted that the petitioners are innocent and have been falsely implicated in the present case. He submitted that the petitioners were not named in the F.I.R. and their names surfaced during the course of investigation on the basis of the statement of the survivor. He further submitted that the petitioners have no criminal antecedent and that the main accused namely, Chandan Kumar, has already been granted

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regular bail by this Court. He also submitted that the petitioners have been implicated due to neighbourhood disputes and no specific overt act is attributed to them. He further submitted that the survivor's statement was recorded on 14.05.2024 under Section 164 Cr.P.C./183 BNSS by the Magistrate in which she has not made any allegation against these petitioners.

5. *Per contra*, learned APP for the State vehemently opposed the prayer for grant of pre-arrest bail.

6. Having heard the rival submissions made on behalf of the parties and having perused the materials available on record, as well as the statement of the survivor recorded under Section 164 of the Cr.P.C./ 183 BNSS, I find that the statement of the survivor does not appear to fully support the allegations made in the F.I.R. against the petitioners. In her statement, before the Magistrate, the survivor has stated that the co-accused Chandan Kumar made her unconscious, but she has not stated specifically that the present petitioners committed any sexual assault upon her or forced her to inhale or threw any intoxicating substance on her. The main accused Chandan Kumar, has been granted regular bail by this Hon'ble Court in Cr. Misc No. 32921 of 2025 *vide* order dated 06.08.2025.

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7. It is the settled legal position by the Apex Court in the case of ***Vijaya Singh and Anr. Versus State Of Uttarakhand*** reported in ***2024 INSC 905,*** wherein it was held that a statement recorded under Section 164 CrPC serves a special purpose in a criminal investigation as a greater amount of credibility is attached to it for being recorded by a Judicial Magistrate and not by the Investigating Officer. The relevant paragraphs of the aforesaid judgment is *inter alia* as under:

> *"27. The jurisprudence concerning a statement under Section 164 CrPC is fairly clear. Such a statement is not considered as a substantive piece of evidence, as substantive oral evidence is one which is deposed before the Court and is subjected to cross-examination. However, Section 157 of Indian Evidence Act, 18725 makes it clear that a statement under Section 164 CrPC could be used for both corroboration and contradiction. It could be used to corroborate the testimonies of other witnesses. In R. Shaji v. State of Kerala, this Court discussed the two-fold objective of a statement under Section 164 CrPC as:*
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> > *"15. So far as the statement of witnesses recorded under Section 164 is concerned, the object is two fold; in the first place, to deter the witness from changing his stand by denying the contents of his previously recorded statement, and secondly, to tide over immunity from prosecution by the witness under Section 164. A proposition to the effect that if a statement of a witness is recorded under Section 164, his evidence in Court should be discarded, is not at all warranted ..."*
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> *The Court also recognized that the need for recording the statement of a witness under Section 164 CrPC arises when the witness appears to be connected to the accused and is prone to changing his version at a later stage due to influence. The relevant para reads thus:*
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> > *"16. During the investigation, the Police Officer may sometimes feel that it is expedient to record the statement of a witness under Section 164 Code of Criminal Procedure. This usually happens when the witnesses to a crime are clearly connected to the accused, or where the accused is very influential, owing to which the witnesses may be influenced*
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> *28. **Considering the conceptual requirement of***

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> ***recording a statement before a Judicial Magistrate during the course of investigation and the utility thereof, as prescribed in Section 157 of Evidence Act, it could be observed that a statement under Section 164, although not a substantive piece of evidence, not only meets the test of relevancy but could also be used for the purposes of contradiction and corroboration. A statement recorded under Section 164 CrPC serves a special purpose in a criminal investigation as a greater amount of credibility is attached to it for being recorded by a Judicial Magistrate and not by the Investigating Officer. A statement under Section 164 CrPC is not subjected to the constraints attached with a statement under Section 161 CrPC and the vigour of Section 162 CrPC does not apply to a statement under Section 164 CrPC. Therefore, it must be considered on a better footing****……."*
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> **(Emphasis supplied)**

8. Considering the aforesaid facts and circumstances, in absence of any material against the petitioners in support of the allegation and any specific allegation made by the survivor when her statement was recorded under Section 164 of the Cr.P.C./ 183 BNSS that only the present petitioners have thrown the intoxicating substance, I am of the opinion that the petitioners have, *prima facie,* made out a case for grant of pre-arrest bail.

9. The petitioners, above named, are directed to be released on pre-arrest bail, in the event of their arrest or surrender before the learned District Court within a period of four weeks from today, on furnishing bail bonds of Rs. 10,000/- (Rupees Ten Thousand) each, with two sureties of the like amount each, to the satisfaction of the learned Judicial

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Magistrate 1st Class, Saran at Chapra, in connection with Garkha P.S. Case No. 268 of 2024, subject to the conditions laid down under Section 482(2) of the Bharatiya Nagarik Suraksha Sanhita, 2023.

10. The learned District Court is directed to verify the criminal antecedent of the petitioners, as stated in paragraph no. 3 of the bail application. If any other case is pending against the petitioners, as what has been stated in paragraph no. 3, this order will lose its force automatically.

(Purnendu Singh, J)

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