

**IN THE HIGH COURT OF JUDICATURE AT PATNA  
CRIMINAL MISCELLANEOUS No.35522 of 2020**

Arising Out of PS. Case No.-288 Year-2019 Thana- BARARI District- Katihar

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Md. Tofik Alam, male, aged about 25 years, S/o Abdul Salam, resident of  
village- Marghia Nicha Tola, P.S.- Barari, District- Katihar

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

=====  
**Appearance :**

For the Petitioner/s : Mr. Raghiv Ahsan, Senior Advocate with  
Mr. Bipin Kumar, Advocate  
For the State : Mr. Md. Arif, APP

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**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH  
ORAL JUDGMENT**

**Date : 20-07-2021**

The matter has been heard *via* video conferencing.

2. Heard Mr. Raghiv Ahsan, learned senior counsel along with Mr. Bipin Kumar, learned counsel for the petitioner and Mr. Md. Arif, learned Additional Public Prosecutor (hereinafter referred to as the 'APP') for the State.

3. The petitioner apprehends arrest in connection with Barari PS Case No. 288 of 2019 dated 11.09.2019, instituted under Sections 341, 323, 376, 354, 504, 506, 120-B/34 of the Indian Penal Code and 4 of the Protection of Children from Sexual Offences Act, 2012.

4. The allegation against the petitioner is that he had committed rape on the informant and thereafter he continued to maintain physical relationship on the pretext that he would



marry her and later it is alleged that she had pain in stomach and had gone to the father of the informant, who had inappropriately touched her and told her that if she gets into physical relationship with him then he would get her married to his son.

5. Learned counsel for the petitioner submitted that only to exert pressure on the petitioner to marry her, this false case has been lodged. It was submitted that it is unbelievable that a father would tell a girl that if she gets into physical relationship with him, he would get her married to his son. Further, it was submitted that the medical report discloses that she is 17-18 years old and not 16 years. Learned counsel submitted that in the statement before the Court under Section 164 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Code'), which was recorded on 16.09.2020, she has stated that the petitioner again committed rape on her on 15.09.2019. It was submitted that such claim is falsified for the reason that from 13.09.2019 to 16.09.2019, she was in the police station in the custody of Mahila Police Constable, Neha Kumari, and Mahila Chaukidaar, Taleshwari Devi, and thus, there is no question of the petitioner committing rape on 15.09.2019. It was submitted that no date of even the *Jalsa* meeting in which for the first time it is said that she was taken to



a field and raped by the petitioner has been mentioned. Learned counsel submitted that even the allegation that she was in *Jalsa* and was taken to a field by Sawana Khatoon and Tajkesh Kahtoon where the petitioner was present and rape was committed, is unbelievable for the reason that no such act would be committed by any person in presence of his two sisters. It was submitted that in the FIR, it has been stated that two sisters of the petitioner had called her and had taken her to the field where the petitioner was present whereas in her statement under Section 161 of the Code, before the police she has stated that the petitioner had taken her to the field on the pretext of introducing her to his sisters where he had committed the crime. Learned counsel submitted that in the statement under Section 164 of the Code also she had stated that the petitioner had taken her to the field where his two sisters were present and thereafter she had stated on 15.09.2020 that she was again raped in the Madrasa. Thus, it was submitted that there is enough discrepancy in the statements of the informant to indicate the falsity of the allegation and most importantly with regard to the allegation that the petitioner again committed rape on her on 15.09.2019; during such period she was in the custody of two female constables at the police station. It was submitted that the



petitioner has been falsely implicated only to exert pressure for marriage and that he has no other criminal antecedent.

6. Learned APP, from the case diary, did not dispute the fact that the FIR version is that the sisters of the petitioner had called the informant to the field whereas in the statement under Sections 161 and 164 of the Code she has stated that the petitioner had taken her to the field. It was also not controverted that as per the statements, rape was committed on the informant by the petitioner in the presence of his sisters and further that she was in the custody of two female constables from 13.09.2019 to 16.09.2019 when she was taken to the Court for getting her statement recorded under Section 164 of the Code.

7. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, in the event of arrest or surrender before the Court below within six weeks from today, the petitioner be released on bail upon furnishing bail bonds of Rs. 25,000/- (twenty five thousand) with two sureties of the like amount each to the satisfaction of the learned Chief Judicial Magistrate, Katihar in Barari PS Case No. 288 of 2019, subject to the conditions laid down in Section 438(2) of the Code and further (i) that one of the bailors shall be a close relative of the petitioner, (ii) that the petitioner and the



bailors shall execute bond and give undertaking with regard to good behaviour of the petitioner, and (iii) that the petitioner shall cooperate with the Court and police/prosecution. Any violation of the terms and conditions of the bonds or the undertaking or non-cooperation shall lead to cancellation of his bail bonds.

8. It shall also be open for the prosecution to bring any violation of the foregoing conditions of bail by the petitioner, to the notice of the Court concerned, which shall take immediate action on the same after giving opportunity of hearing to the petitioner.

9. The petition stands disposed off in the aforementioned terms.

**(Ahsanuddin Amanullah, J)**

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