

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.942 of 2016

Arising Out of PS.Case No. -92 Year- 2016 Thana -RAFIGANJ District- AURANGABAD

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1. Awadhesh Sharma Son of Vishram Sharma resident of village - Baruna, P.S. Rafiganj, District Aurangabad.

.... Appellant/s

Versus

1. The State of Bihar.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA
JUDGMENT

Date: 15-12-2016

**H.K.
Srivastava,J.**

Heard learned counsel for the appellant as well as learned Special Public Prosecutor, appearing for the State of Bihar (respondent).

This Cr. Appeal filed u/S 14(A) of SC/ST (Prevention of Atrocities) Amendment Act, is preferred against the order dated 18-10-2016 passed by learned Additional Sessions Judge-IV, Aurangabad by which, he refused to enlarge the appellant on bail who has been made accused in Rafiganj P.S. Case No. 92 of 2016 registered for the offences under Sections-376/511 of the Indian Penal Code and Sections-3(i)(x), 3(i)(xi) and 3(2) v of the SC/ST (Prevention of Atrocities) Act.

The informant gave written report mentioning therein that



on the alleged date of occurrence, the appellant made attempt to commit rape upon her. On the basis of aforesaid written report, Rafiganj P.S. Case No. 92 of 2016 was registered for the offences under Sections-376/511 of the Indian Penal Code and Sections-3(i)(x), 3(i)(xi) and 3(2) v of the SC/ST (Prevention of Atrocities) Act.

In course of investigation, the appellant was arrested and was sent to judicial custody on 31-08-2016. Subsequently, the appellant moved for regular bail but the same was rejected by the learned Additional Sessions Judge-IV passing the impugned order dated 18-10-2016 in which, the learned Additional Sessions Judge-IV specifically, mentioned that at paragraphs-6, 8, 25, 75 of the case diary, witnesses stated that the appellant was previously found indulged in similar type of offences. The learned Additional Sessions Judge-IV, Aurangabad also mentioned in the impugned order that the case was under investigation.

Learned counsel, appearing for the appellant submits that the appellant has been implicated in this case due to village politics and as a matter of fact, no such occurrence did ever take place. It is further submitted that no doubt, in course of investigation, some prosecution witnesses stated before the investigating officer that the appellant was found indulged in similar type of occurrence but admittedly, no one lodged any criminal case against the appellant and,



therefore, except the oral statement of aforesaid witnesses, there is nothing on the record to show that the appellant was previously found indulged in similar type of occurrence.

On the other hand, learned Special PP supported the impugned order, arguing that there is specific allegation against the appellant of attempt to commit rape upon a female of Schedule Caste community and, therefore, the appellant does not deserve privilege of bail.

Having heard the above-said submissions, I went through the impugned order as well as case diary.

No doubt, in course of investigation, the informant as well as some witnesses supported the alleged occurrence and according to the informant, the alleged occurrence took place in a lonely place but the impugned order goes to show that while rejecting the bail prayer of the appellant, the learned Additional Sessions Judge took the factum of previous history of the appellant and, therefore, it is obvious from the aforesaid facts that at the time of passing impugned order,, the mind of the learned Additional Sessions Judge was pre-occupied with the so-called antecedent of the appellant.

It is an admitted position that except the statement of some witnesses, there is nothing in the entire case diary or on the record to show that the appellant was previously found indulged in



similar type of occurrence because in course of entire investigation, no so-called victim came forward before the I.O. to support the aforesaid previous acts. Therefore, in my view, the impugned order is liable to be set aside because the said order has been passed by the learned Additional Sessions Judge with pre-occupied mind.

Accordingly, this Cr. Appeal is allowed and the impugned order dated 18-10-2016 passed in Rafiganj P.S. Case No. 92 of 2016 is hereby, set aside.

Accordingly, the appellant named above, is directed to be released on bail on furnishing bail bond of Rs. 10,000/- (ten thousand) with two sureties of the like amount each in connection with Rafiganj P.S. Case No. 92 of 2016 to the satisfaction of learned Chief Judicial Magistrate, Aurangabad.

(Hemant Kumar Srivastava, J)

A.K.V./-

AFR/NAFR	
CAV DATE	
Uploading Date	20-12-2016
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