

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.427 of 2017

Arising Out of PS.Case No. -103 Year- 2014 Thana -FATEHPUR District- GAYA

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Binod Yadav Son of Amrit Yadav, Resident of Village- Nayamatpur, P.S.
Fatehpur, District- Gaya.

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant/s : Mr.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR
TRIVEDI
ORAL ORDER

3 26-04-2017 Heard learned counsel for the appellant as well as
learned Spl.P.P.

The victim had alleged that in the night of 24.04.2014, when she came down from upstairs to switch of bulb, the appellant caught hold her, gagged her mouth, dragged her and then, took her away over a vehicle to Gaya where she was confined in a room for three days and then, was taken back after coming to know about the activity of her family members who were adamant to institute a case. Furthermore, it has also been alleged that during her stay at Gaya, she was ravished by the appellant. From the record, it transpires that case has been compromised and in the aforesaid background, appellant's presence has been secured on 24.10.2016 on which date, prayer



for bail has been rejected by the learned lower court.

It has been submitted on behalf of appellant that victim happens to be major as has been found during medical examination. Furthermore, from the F.I.R., it is evident that no coercion, threat or allurement was made on behalf of appellant nor there happens to be any sort of allegation that appellant was ever assaulted and on that very pretext, keeping the victim under threat or fear of death put under command. Contrary to it, it suggest that victim a major, herself accompanied the appellant whereupon no offence under Section 376 of Indian Penal Code is made out, more particularly, in the background of objective finding of the doctor having absence of and any kind of injury over any part of body of the victim including her private part apart from, no sign of recent sexual intercourse. That being so, considering the case in its totality, it is a fit case whereunder, appellant should be released on bail

Learned A.P.P. opposed the prayer and submitted that F.I.R. does not happens to be encyclopedia giving minute to minute detail. There happens to be specific disclosure that victim was caught hold, her mouth was gagged and then, was dragged. In that event, it has to be seen whether she was in a position to resist, more particularly, when she found the appellant in her house by



surprise and she was residing at *Nani's* place. Apart from this, it has also been stated that victim was examined under Section 164 of Code of Criminal Procedure whereunder, she had detailed the circumstances and further, the activity of the appellant having pistol. It is also submitted that the doctor had not ruled out that she was not raped. For the present, the question of consent as has been denied by the victim does not arise and so, appellant is not at all entitled for bail. Apart from this, it has also been submitted that inspite of direction by the Apex Court to ascertain age of victim after holding an enquiry as per J.J. Act in 2013 Cr.L.J. 3976 as well as (2015) 7SCC 733, still medical examination is being conducted for ascertainment of age which should not be encouraged.

Considering the facts in its totality, prayer for bail of the petitioner is rejected.

(Aditya Kumar Trivedi, J.)

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