

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.10979 of 2019

Arising Out of PS. Case No.-156 Year-2018 Thana- MAKER District- Saran

-
1. SOHEB ANSARI @ SAHEB ANSARI, S/o Mustafa Ansari, resident of village-Fulwariya,P.S-Maker, Distt.-Saran.
 2. Suraj Sah, S/o Hari Sah @ Hari Lal Sah, resident of village-Fulwariya,P.S-Maker, Distt.-Saran.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Mukesh Kumar Singh, Adv.

For the Opposite Party/s : Mr.Murli Dhar,APP

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

2 25-02-2019 Heard learned counsel for the petitioners and learned
APP for the State.

The petitioners are languishing in custody since 21.10.2018 in a case registered for the offences punishable under Sections 376/34 of the Indian Penal Code and Sections 3,4 of the POCSO Act.

The prosecution case got initiated on the Fardbeyan of Rajkumar Goswami, recorded by S.I.-cum-S.H.O., S. N. Singh, Maker Police Station on 20.10.2018 is to the effect that on 19.10.2018, the informant went to see the fair at Amnaur and 11.45 P.M. when he returned back to his house, he did not find his younger sister Shanti Kumari, aged about 19 years, then search was made and the victim was found crying near



Phulwariya State Bank of India. On being asked, the victim conveyed that co-villager Sohaib Ansari, the petitioner along with co-accused, Rajjai Ansari and Suraj Sah came and after closing her mouth, took her to a nearby field and ravished her one by one. Accordingly, the FIR was registered against three persons.

It is submitted by learned counsel for the petitioners that in the statement of the victim has girl recorded under Section 164 of the Cr. P.C., the victim got her aged recorded as 19 years, whereas, the learned Court below has assessed her age as 17-18 years. The victim has further stated that while she was sleeping outside her house, five accused persons covering their faces came and took the victim to a nearby field, but in the meantime, his brother Rajkumar Goswami came and the accused persons escaped from the scene. The victim has not alleged any forceful physical relationship against any of the accused persons. Hence, the statement under 164 of the Cr.P.C. completely demolishes the accusation of rape. It is further submitted that the victim was medically examined by the doctor on 20.10.2018 at 11.50 A.M. wherein neither any external nor any internal injury has been found on the person of the victim. The medical report of the victim also suggests



absence of spermatozoa either dead or live. The doctor has also assessed the age of the victim as 17 years. Hence, considering the age recorded by the victim herself in the statement recorded under Section 164 of the Cr. P.C and the age assessed by the Court as well as by the doctor during medical examination of the victim, no offences under the POCSO Act is made out. A statement has been made in paragraph no.3 of the petition that the petitioners are not having any criminal antecedent.

Learned APP for the State submits that the accusation is specific against the petitioner.

Considering the fact that the statement of the victim girl recorded under Section 164 of the Cr. P.C. neither supports the accusation levelled in the FIR by the informant wherein he alleged that he was conveyed the name of the petitioner along with others, who ravished the victim and the accusation not being corroborated by the medical opinion, coupled with statement made in paragraph no.3 of the petition that the petitioners are not having any criminal antecedent, let the above named petitioner be released on bail, on furnishing bail bond of Rs.10,000/- (ten thousand) each with two sureties of the like amount each to the satisfaction of learned 1st



Additional Sessions Judge, POCSO Act, Saran, Chapra, in
connection with Maker P.S. Case No. 156 of 2018.

(Dinesh Kumar Singh, J)

Ashwini/-

U		T	
---	--	---	--

