

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.4666 of 2018

Arising Out of PS. Case No.-267 Year-2018 Thana- BAIKUNTHPUR District- Gopalganj

Durgesh Kumar Son of Ram Pravesh Mahato, Resident of Village- Shivsah
Purnka Tola, P.O.- Dighwa Dubauli, P.S.- Baikunthpur, District- Gopalganj.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr.Ashish Giri, Adv.
		Mr. Rajat Kumar Tiwary, Adv.
For the Respondent/s	:	Mr.Binay Krishna (APP)

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL ORDER

3 23-01-2019 Heard learned counsel for the parties.

This is an appeal under Section 14(A) (2) of SC & ST (Prevention of Atrocities) Act, 1989 against the refusal of prayer for bail by order dated 26.11.2018 passed by learned 1st Additional Sessions Judge, Gopalganj, in connection with Baikunthpur P.S. Case No. 267 of 2018 registered under Sections 376(B)(F)(r)/34 of the Indian Penal Code, Section 4/6/8/10 of POCSO Act and Section 3(i)(r)(w), 2(Va) of S.C/S.T. Act.

Informant who is herself the victim has stated in her fardbeyn that on 12.10.2018 she had gone to the market and reached the shop of Kedar Sah and was inquiring about the price of boxes, he took her inside the shop on the pretext of



seeing small boxes and thereafter bolted the room from outside and where two accused Rupam Kumar and Durgesh Kumar were present and they committed rape upon her and thereafter Kedar Sah open the door and both accused fled away. She went to her house weeping and stated the whole occurrence to her mother and thereafter reached the police station where her statement was recorded and she put her signature on it in presence of her mother.

It has been submitted on behalf of the appellant that he is innocent and has been falsely implicated in this case only on suspicion and statement of informant victim was recorded under Section 164 of Cr.P.C. on 25.10.2018 in which she has stated that Rupam Kumar was present in the shop and he took her inside the shop and committed rape upon her. In her statement under Section 164 Cr.P.C. she has not named the petitioner to be present or committing rape upon her. It has been further submitted that victim was examined by the Medical Board next day which did not find any sign of rape or sexual assault or any injury found on the person of victim. It has been further submitted that co-accused Kedar Sah has been granted regular bail by co-ordinate bench of this court passed in Cr. Misc. No. 77431 of 2018 vide order dated 15.01.2019.



Petitioner has clean antecedent and is in custody since 12.10.2018.

Considering the aforesaid facts and circumstances of the case, let the appellant named above be released on bail upon furnishing bail bond of Rs. 20,000/- (twenty thousand) with two sureties of the like amount each to the satisfaction of learned court below where the case is pending in connection with the aforesaid case, with following conditions :

- (1) Bailors should be local having sufficient immovable property within the jurisdiction of the court concerned.
- (2) Appellant shall co-operate in the trial and shall be properly represented on each and every date fixed by the court and shall remain physically present as directed by Court and their absence on two consecutive dates without sufficient reasons, his bail bond shall be cancelled by the court below.
- (3) If the appellant tampers with the evidence or the witnesses of the case, in that case, prosecution will be at liberty to move for cancellation of bail of the appellant.

Accordingly, the impugned order is set aside and this appeal stands allowed.

(S. Kumar, J)

Rajiv/-

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

