

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.2389 of 2019

In
CRIMINAL MISCELLANEOUS No.30753 of 2019

Arising Out of PS. Case No.-1 Year-2019 Thana- MAHUA District- Vaishali

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Dharmendra Kumar Son of Sunil Patel Resident of Village-Kushar, P.S.-
Mahua, District-Vaishali.

... .. Appellant/s

Versus

The State of Bihar.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Arun Kumar Jha

For the Respondent/s : Mr. Binay Krishna

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**CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA
JAISWAL**

ORAL ORDER

7 19-09-2019 Heard learned counsel for the appellant and learned
Special Public Prosecutor for the State.

This is an appeal under Section 14(A)(2) of the
Scheduled Castes and Scheduled Tribes (Prevention of
Atrocities) Act, 1989 (hereinafter in short referred to as the
'SC/ST Act') against the refusal of prayer for bail vide order
dated 28.02.2019 passed by learned 1st Additional Sessions
Judge cum Special Judge, Vaishali at Hajipur in connection with
Mahua P.S. Case No.01 of 2019 registered under Section 376 D
of the Indian Penal Code, Section 3(1) (w)(i)(ii)/3(2)(v) of the
Scheduled Castes and Scheduled Tribes (Prevention of
Atrocities) Act and Section 4, 6 & 10 of the POCSO Act.



While the informant had gone to hand-pump to fetch water one co-accused person pressing her mouth took her to the field of Ajay Singh where two persons present from before. All the three accused persons, namely, Vikash Kumar, Golu Kumar and Dharmendra Kumar administered some intoxicating substance to her resultantly she fell senseless. Then all the three accused persons committed rape against her in turn.

It is submitted by learned counsel for the appellant that no such occurrence as alleged ever took place. Appellant has been falsely implicated in the case due to mistake of fact and dirty village politics. There is no eye witness of the occurrence. Though the informant in her statement made under Section 161 & 164 Cr.P.C. has supported the occurrence but she has stated that she was administered some intoxicating substance at 9 PM by taking her in the field and she regained sense at 12:30 AM i.e. after 3:30 hours and on regaining sense she learnt that all the accused persons committed rape against her. The aforesaid statement of the informant goes to suggest that the informant has not seen the occurrence of committing rape against her by the appellant as she was senseless by that time and on medical examination doctor has not found any



injury either on his person or on her private part and has opined that no evidence present sexual act is found against her. Though I.O. has seized the attire of the informant but has not sent it to the FSL for its chemical examination. It is further submitted by learned counsel for the appellant that the informant has entered into a compromise with the appellant finding him innocent in the case and in the petition filed before the learned lower Court she has candidly stated that she has filed the case against the appellant due to misunderstanding and at the instance of others. Appellant has no criminal antecedent. Hence, the appellant may be enlarged on bail.

Per contra, learned Special P.P. for the State vehemently opposing the prayer for bail submitted that though the doctor has not found any sign of rape against the victim at the hands of the appellant but has assessed the age of victim between 14-16 years i.e. minor. The victim in her statement made under Section 161 & 164 Cr.P.C. has stated that which in the night she had gone to fetch the water from the hand-pump one of the accused dragged her in the field and then all the three accused persons administered some intoxicating substance to her resultantly she fell senseless and regained sense after 3:30 hours. Hence, the appellant does not deserve bail.



In the facts and circumstances of the case, I am not inclined to enlarge the appellant on bail. The prayer for bail is hereby rejected.

However, the learned Trial Court is directed to conclude the trial as expeditiously as possible preferably within six months after framing of the charge. Both the parties are expected to extend their co-operation in conclusion of the trial. The appellant may renew his prayer for bail if the trial is not concluded within the stipulated period.

Accordingly, this appeal is dismissed.

(Prakash Chandra Jaiswal, J)

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