

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.1362 of 2020**

Arising Out of PS. Case No.-202 Year-2019 Thana- NIRMALI District- Supaul

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SHAMBHU KUMAR YADAV Son of Kapileshwar Yadav Resident of
Village- Parsa, P.S.- Ghoghardhiha, District- Madhubani.

... .. Appellant/s

Versus

THE STATE OF BIHAR

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Kunal Tiwary
For the Respondent/s : Mr.A.G

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL ORDER

2 14-09-2020 The court proceeding has been conducted through
virtual mode.

Since the court proceeding is not functional in
physical mode, due to present Pandemic, Covid -19, the present
appeal has been listed with defects.

Learned counsel for the appellant undertakes to
remove the defect(s) within a period of four weeks of
resumption of court proceeding in physical mode.

If the defect(s) is not removed within the undertaken
period, the office will place the matter again.



Heard learned counsel for the appellant and the State.

The present appeal has been preferred against the order dated 17.02.2020, passed by learned Additional and Sessions Judge-cum-Special Judge-I, Supaul in B.P. No. 129 of 2019 in connection with Nirmali P.S. Case No. 202 of 2019, whereby the prayer for bail of the appellant has been rejected.

The appellant is languishing in custody since 09.12.2019, in a case registered for the offences punishable under Sections 341, 342, 323, 376, 506 and 504/34 of the IPC, Sections 3/4 of the Protection of Children from Sexual Offences Act and Sections 3(i)(r)(s)(w) and Sections 3(2)(va) of SC/ST (Prevention of Atrocities) Act.

The prosecution case, as per the written report of the informant (name changed - 'X') submitted to the S.H.O., Nirmali Police Station is to the effect that on 05.12.2019 at about 9 P.M., when the informant was waiting for her father on the road, in the meantime, two accused persons came on a motorcycle and forcibly took her to a room near the old registration office where the appellant and other accused persons were present from before when it is alleged that one unknown miscreant ravished her.

Learned counsel for the appellant submits that the



alleged occurrence took place in the main town when in fact, no one saw the alleged occurrence. During medical examination, the age of the victim has been assessed as 17-19 years where no sign of rape, particularly resisting injury has been found on the body of the victim. Moreover, the investigation has already been concluded. A statement has been made in paragraph no.3 of the petition that the appellant is not having any criminal antecedent.

Learned counsel for the State submits that the appellant is named in the FIR with specific accusation.

Considering the fact that during medical examination, the age of the victim has been assessed as 17 to 19 when no sign of rape, particularly resisting injury has been found and the investigation has already been concluded, coupled with statement made in paragraph no.3 of the petition to the effect that the appellant is not having any criminal antecedent, the order dated 17.02.2020, passed by learned Additional and Sessions Judge-cum-Special Judge-I, Supaul in B.P. No. 129 of 2019 in connection with Nirmali P.S. Case No. 202 of 2019, is hereby quashed and the appellant is directed to be released on bail for the present provisionally for a period of three months on furnishing one surety to the satisfaction of the learned Additional and Sessions Judge-cum-Special Judge-I, Supaul, in



connection with Nirmali P.S. Case No. 202 of 2019.

However, in view of the present pandemic COVID- 19, it will be open for the learned Court below to accept the bail bond on furnishing an undertaking by the surety, on photo copy of his Aadhar Card to the effect that he is ready to become the bailor of the appellant which may be transmitted by such surety on photo copy of his Aadhar Card to the effect that he is ready to become the bailor of the appellant which may be transmitted by such surety to the learned Court concerned through e-mode.

The provisional bail of the appellant will be confirmed by the learned Court below within three months on furnishing bail bond of Rs.10000/- (ten thousand) with two sureties including one surety given at the time of provisional bail of the like amount each to the satisfaction of learned Additional and Sessions Judge-cum-Special Judge-I, Supaul, in connection with Nirmali P.S. Case No. 202 of 2019.

The learned Court below will be at liberty to extend the period of provisional bail further if the court proceeding in physical mode will not resume in next three months.

The learned court below will be at liberty to cancel the bail bonds of the appellant if he defaults for three



consecutive occasions during trial.

Accordingly, the present appeal is allowed and disposed of.

(Dinesh Kumar Singh, J)

Amrendra/-

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