

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.3277 of 2019**

Arising Out of PS. Case No.-78 Year-2019 Thana- BARHARA KOTHI District- Purnia

KRISHN KUMAR @ KRISHNA KUMAR Son of Sitaram Mandal R/o
Village- Barhara Koti Godiyari, P.S.- Barhara Koti, District- Purnea.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Dr. Bidhu Ranjan

For the Respondent/s : Mr.Anand Mohan Prasad Mehta

**CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER**

3 02-06-2020 The matter has been taken up through virtual
Court proceeding.

Heard learned counsel for the appellant. However,
none appears on behalf of the informant.

The present appeal has been preferred on behalf of the
appellant for setting aside the order dated 11.6.2019 passed
by the learned 1st Additional Sessions Judge-cum-Special
Judge, POCSO Act, Purnea in connection with Barahara P.S.
Case No. 78 of 2019 registered for the offences punishable
under Section 376D of the IPC, Section 4 of the POCSO Act
and Sections 3(i)(w)/3(ii)(v) of The Scheduled Caste and
Scheduled Tribe (Prevention of Atrocities) Act, 1989,
whereby the appellant's prayer for bail in the aforementioned
case has been rejected. Hence, the consequential prayer for



grant of bail has been made.

The prosecution case, as per the written report of Shivrani submitted to the SHO, Barhara Kothi Police Station, is to the effect that on 10.4.2019 at about 5.00 P.M. the informant, on being asked by her mother, went to deposit the Polio box on Primary Health Centre, Barhara and while she was returning home, co-accused Nitish Kumar asked her to take certain things given by her mother and took her in a hut where co-accused Shubham Kumar, petitioner Krishna Kumar and the maternal brother of the petitioner were present there and all the four persons ravished her, as a result, she got unconscious and in the evening, when she regained her consciousness, she came home.

It is submitted by learned counsel for the appellant that for the occurrence of 10.4.2019 at about 5.00 P.M., the FIR has been registered on 11.4.2019 at 5.45 P.M., i.e., after 24 hours of the alleged occurrence, without giving the reasonable explanation for such inordinate delay. The victim has been examined by the medical board on 13.4.2019 where neither external nor internal injury has been found. It is further submitted that no spermatozoa has been found during the medical examination of the victim, however, the age of



the victim has been assessed between 14-15 years, but no sign of rape has been found on the body of the victim. It is also submitted that the statement of victim under Section 164 of the Cr.P.C. has been recorded on 26.4.2019 wherein she has got her age recorded as 12 years but she has not named the appellant in the alleged occurrence. The victim has only named co-accused Nitish Kumar and three unknown. Statement has been made in paragraph 3 of the petition that the petitioner is not having any criminal antecedent. The investigation has already been concluded.

Learned APP submits that accusation is specific against the appellant in the FIR, however, he further submits that there is no explanation for delayed lodging of the case. Moreover, the accusation is not being corroborated by the medical opinion and the victim has not named the appellant in her statement recorded under Section 164 Cr.P.C.

Considering the delayed lodging of the case, the accusation against the appellant not being corroborated by the medical opinion, the fact that the victim has not named the appellant in 164 Cr.P.C. statement, the investigation has already been concluded, the statement made in paragraph 3 of the petition that the petitioner is not having any criminal



antecedent coupled with the period in custody, the order dated 11.6.2019 passed by the learned 1st Additional Sessions Judge-cum-Special Judge, POCSO Act, Purnea in connection with Barahara P.S. Case No. 78 of 2019 is set aside and the appellant above named is directed to be released on bail for a period of three months for the present on furnishing one surety to the satisfaction of the learned 1st Additional Sessions Judge-cum-Special Judge, POCSO Act, Purnea in the aforementioned case.

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 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 of the like amount each to the satisfaction of the learned learned 1st Additional Sessions Judge-cum-Special Judge, POCSO Act, Purnea in connection with Barahara P.S.



Case No. 78 of 2019 including one surety given at the time of provisional bail.

The learned Court below will be at liberty to further extend the period of provisional bail if the lock down is not over in next three months.

Accordingly, the appeal is allowed.

(Dinesh Kumar Singh, J)

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