

**IN THE HIGH COURT OF JUDICATURE AT PATNA
(FROM RESIDENTIAL OFFICE VIA VIDEO APPLICATION)
CRIMINAL APPEAL (SJ) No.5302 of 2019**

Arising Out of PS. Case No.-67 Year-2019 Thana- SARAI District- Vaishali

ANKAJ KUMAR @ ANKAJ SHARMA @ ANKAJ KUMAR SHARMA Son
of Late Pradeep Sharma Resident of Village - Akbar Malahi, P.S.- Sarai,
District - Vaishali.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

with

CRIMINAL APPEAL (SJ) No. 1308 of 2020

Arising Out of PS. Case No.-67 Year-2019 Thana- SARAI District- Vaishali

RAJ KUMAR Son of Dinesh Sharma @ Jhanjhan Resident of Village - Akbar
@ Akawar Malahi, P.S.- Sarai, District - Vaishali

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

(In CRIMINAL APPEAL (SJ) No. 5302 of 2019)

For the Appellant/s : Mr.Lovekush Kumar, Advocate

For the Respondent/s : Mr.Sadanand Paswan, Spl. PP

(In CRIMINAL APPEAL (SJ) No. 1308 of 2020)

For the Appellant/s : Mr.Rohit Kumar, Advocate

For the Respondent/s : Mr.Sadanand Paswan, Spl. PP

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER**

6 29-06-2020 With consent of learned counsel for the parties both

the appeals have been heard together and are being disposed off

by this order.

Heard learned counsel for the appellants in both the
appeals. Mr. Sadanand Paswan, learned Special P.P. appears on



behalf of the State.

Cr. Appeal (SJ) No. 5302/2019 has been filed by the accused Ankaj Kumar @ Ankaj Sharma @ Ankaj Kumar Sharma for grant of regular bail in connection with Sarai P.S. Case No. 67/2019 registered for the offence under Sections 341, 323, 354(b), 376D, A/34 of the Indian Penal Code, under Sections 4, 6, 8, 10, 17 of Protection of Children from Sexual Offences Act (hereinafter referred to as POCSO Act) and under Section 3(i)W (i)(ii)3/2(Va) of SC/ST Act pending in the court of learned 1st Additional Sessions Judge-cum-Special Judge (SC/ST) Vaishali at Hajipur.

Cr.Appeal (SJ) No. 1308/2020 has been filed by co-accused Raj Kumar for similar relief.

It is the submission of learned counsel for the appellant in both the applications that the entire prosecution case is false, concocted and baseless. Learned counsel(s) submit that the First Information Report has been lodged by mother of the victim girl on hearsay statement. According to the informant, her daughter had gone to ease herself during night hours between 7 – 8 P.M. on 24.02.2019. She had informed the informant that she was going for that purpose. It is stated that her daughter had gone to a mustered plant field situated at a



distance of 500 meters but she did not return for sometime, whereafter the informant and her family members started searching her. After sometime, the victim girl was brought to her house in unconscious condition. She disclosed the name of three accused including this appellant and informed everything. In the First Information Report the informant thereafter says that she did not come to the police station in night because the victim girl had informed her that on the point of pistol she was raped and had been threatened that if these things are disclosed to her parents they would kill the parents also.

It is submitted that the victim girl has, in her statement, given a completely different version. In paragraph '18' of the case diary her statement has been recorded and in her statement she has stated that she had gone to ease out in a field situated at a distance of 5 – 6 steps from her residence. According to her as she was leaving after easing out, the co-accused Harsh Kumar and the appellant Ankaj Kumar made her to smear something with a handkerchief whereafter she became unconscious and thereafter she could not know as to what happened to her. She has stated that in the morning about 5- 6 A.M. when she gained her sense then she called her grandmother by shouting and thereupon the family members



came and took her to house. She has stated on a written piece of paper that she has put her signature after understanding the same in presence of her mother on the same day.

Learned counsel submits that according to the victim girl she had gone to a field situated at a distance of 5 – 6 steps only and in the morning after she gained her sense then on her shouting the family members came, whereas her mother has stated that in the night itself the victim girl was brought to her house where she disclosed everything but in the night the informant did not come to police station because they had been threatened by the accused. It is submitted that if informant's version is believed the victim girl had narrated everything in night itself but the victim girl says she gained sense in morning and thereafter she shouted calling her grandmother. According to learned counsel the two statements are quite different and it casts grave doubt on the manner of occurrence as disclosed in the prosecution story.

Learned counsel further submits that in course of investigation, Investigating Officer has recorded in paragraph '6' that the place of occurrence is at a distance of 50 meters from the house of the informant, but the Investigating Officer has not recorded anything about the condition of the place of



occurrence. If it is the prosecution story that the occurrence had taken place in a mustered plant field of a co-villager, the said place must have suffered some damage to the crops and the victim girl could have suffered some sort of external injury. It is submitted that neither the place of occurrence has been reported to have some damaged crops or any sign of forceable entry through the crops nor in the medical examination of the victim girl any external injury has been found on her body.

Learned counsel for the appellant in Cr. Appeal (SJ) No. 5302/2019 has submitted that in course of investigation all the independent witnesses whose statements have been recorded in paragraph 133, 134, 135 and 136 of the case diary have stated that the victim girl had been in love affair with the appellant Raj Kumar in Cr. Appeal (SJ) No. 1308/2020. He has submitted that not a single independent witness has made any statement against this appellant. Learned counsel thus submits that the appellant being a neighbour with whom the informant and her family was not having good relation and sometimes got involved in some petty quarrel took it as an opportunity to implicate this appellant in this case. Appellant is said to have surrendered in connection with this case on 24.07.2019 and has got no criminal antecedent.

Learned counsel for the co-accused Raj Kumar in Cr.



Appeal (SJ) No. 1308/2020 has while reiterating the aforesaid submissions with regard to the discrepancies in the statement of the informant and the victim girl further submitted that in her statement the victim girl had initially not named the appellant, but her family members pressurized her to take name of this appellant in her statement under Section 164 Cr.P.C. Learned counsel for this accused has further submitted that the medical examination report of the victim girl has suggested that the hymen is old torn and there is no external injury on her body which will be highly impossible in case of a gang rape. It is however submitted by way of specific statement in the petition that the victim girl was having a relationship with the appellant which was not liked by the family members and for this reason the appellant has been dragged in the present case. This appellant is in custody since 28.08.2019 and has got one criminal antecedent.

Mr. Sadanand Paswan, learned Special P.P. for the State and has opposed the prayer for regular bail of both the appellants. Learned Special P.P. has read out the statements appearing in the case diary. It is his submission that the medical examination report of the victim girl suggests that she was aged about 14 – 16½ years. No external or internal injury was found



on her body. Hymen is old torn and there was evidence of recent sexual activity with non-motile spermatozoa seen.

Learned Special P.P. thus submits that the medical report does suggest some sexual activity having taken place, though no internal or external injury has been found on the body. Learned Special P.P., has, after going through the case diary particularly the statements recorded in paragraph 133, 134, 135 and 136 accepted that the independent co-villagers have talked about the relationship of the victim girl with the co-accused Raj Kumar but nothing has been stated against the appellant Ankaj Kumar in Cr. Appeal (SJ) No. 5302/2019.

Having regard to the facts and circumstances of the case and upon noticing that on the same day i.e. 25.02.2019 at about 10:00 A.M. the informant along with the victim girl went to the police station where the informant states that the victim girl had gone to ease out at a distance of 500 meters and then on search she was brought to home in unconscious position during night hours and thereafter the victim girl told out the story to the informant, still the informant did not go the police station in the night being afraid of the threat, but in presence of her mother the victim girl makes a different statement before police that she had become unconscious when she was made to smear



something with a handkerchief and thereafter she did not know as to what happened to her, there appears to this Court some substantial difference in the statement of the informant and the victim girl. Initially the victim girl did not name Raj Kumar with whom according to the villagers and Raj Kumar himself she had been in relationship but later on it is informed to this Court that in her 164 Cr.P.C. statement the victim girl took name of the co-accused Raj Kumar also, this deviating feature may be another factor to be taken into consideration while forming an opinion for purpose of grant of regular bail.

This Court has also noticed that in this case there is no eye witness to the alleged occurrence and all the co-villagers who are said to be the independent witnesses and have been examined by police in course of investigation have consistently said that the victim girl had relationship with co-accused Raj Kumar and they wanted to marry, Raj Kumar also admits his relationship, the medical report suggests some sexual activity without there being any external or internal injury, the opinion of the doctor that hymen was old torn is another factor which suggests the continuing relationship. The victim girl is admittedly minor as per the medical examination report and there being an admission on the part of the co-accused Raj



Kumar that he was in relationship with the victim girl as also that he is having criminal antecedent, this court is not inclined to enlarge Raj Kumar who is appellant in Cr. Appeal (SJ) No. 1308/2020 on bail.

Prayer for regular bail of Raj Kumar who is appellant in Cr. Appeal (SJ) No. 1308/2020 is, thus, refused.

Let the trial be expedited. The trial court may proceed with the same without granting unnecessary adjournments.

So far as appellant Ankaj Kumar @ Ankaj Sharma @ Ankaj Kumar Sharma in Cr. Appeal (SJ) No. 5302/2019 is concerned, considering the aforesaid discrepancies in the statement of the informant and the victim girl, the discrepancy with regard to the place of occurrence in the statement of the informant, the victim girl and the Investigating Officer as also that no damaged crops or forceable entry in the field bearing crops could be noticed by the Investigating Officer, on the spot no other material could be collected to suggest rape, the manner of occurrence and place of occurrence i.e. the mustered plant field not getting support, and the co-villagers have though said about the relationship between co-accused and the victim girl but nothing wrong is stated against this appellant, and the appellant has been in custody since 24.07.2019, investigation



against him is complete, there being no submission that release of the appellant Ankaj Kumar at this stage is in anyway likely to adversely interfere with the course of trial or may result in tampering with the evidence, this Court being of the opinion that in the given facts and circumstances the petitioner who is an undertrial prisoner is not required to be kept in jail as it is not required in aid of investigation or help prosecution, let the appellant namely, Ankaj Kumar @ Ankaj Sharma @ Ankaj Kumar Sharma in Cr.Appeal (SJ) No. 5302/2019 be released on bail on furnishing bail bond of Rs. 25,000/- (Rupees Twenty Five Thousand only) with two sureties of the like amount each to the satisfaction of learned Additional Sessions Judge – I – Special Judge (SC/ST), Vaishali at Hajipur in connection with Sarai P.S. Case No. 67/2019, subject to the conditions as laid down under Section 437(3) of the Cr.P.C. as under:

(a) that such person shall attend in accordance with the conditions of the bond executed under this Chapter,

(b) that such person shall not commit an offence similar to the offence of which he is accused, or suspected, or the commission of which he is suspected, and

(c) that such person shall not, directly or indirectly, make any inducement, threat or promise to any person



acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence.

And further condition that he will abide by and observe the guidelines and directives of the Government of India and the State Government with regard to COVID-19 Pandemic during the lockdown period. The authorities concerned shall take appropriate steps to ensure such observance prior to and after release of the appellant.

It is made clear that the observations made hereinabove while rejecting the prayer for bail of the appellant in Cr. Appeal (SJ) No. 1308 of 2020 or while granting bail in Cri. Appeal (SJ) No. 5302 of 2019 are only for the present purpose and no part of it shall prejudice the case of the appellants.

(Rajeev Ranjan Prasad, J)

Rajeev/Arvind

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Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.

