

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal No.5495 of 2019(S.J)

Jitendra Sharma, Male aged about 20 years, son of Umanand Sharma resident of village Kusiya Gawan Ward No.12 P.S. and District Araria

Appellant

Versus

The State of Bihar

Respondent

Appearance

For the Appellant

: Mr. Abhijit Gautam, Adv.

Mr. Anil Prasad Singh, Adv.

Mr. Aditya Mukund, Adv.

For the State

: Mr. Binay Krishna, A.P.P.

CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL ORDER

4 22.05.2020 Heard learned counsel for the appellant and learned APP for the State, through video conferencing.

The instant application has been filed under section 14A(2) of the SC and ST (Prevention of Atrocities) Act, 1989 has been filed by the appellant against the order dated 5.11.2019 passed in Special POCSO Case No.38 of 2019 (arising out of Araria (Mahila) P.S. Case No.81 of 2019) whereby the prayer for regular bail of the appellant was rejected and for grant of regular bail to the appellant.

Araria (Mahila) P.S. Case No.81 of 2019 was registered under sections 376 and 324 of the Indian Penal Code, section 3(2) (v) of the SC and ST (prevention of Atrocities) Act, 1989 and section 4 of the POCSO Act, 2012.

As per F.I.R., the petitioner took away the



six years old minor daughter of the informant and committed rape on her. It is stated that the informant got his daughter treated in Araria Sadar Hospital for bite marks on her cheek.

It is submitted by learned counsel for the petitioner that there is delay of one day in lodging of the F.I.R. Although the informant states that he got his minor daughter treated at Araria Sadar Hospital but there is no explanation as to why no case was instituted in course of the treatment at Sadar Hospital or at Araria Police Station which is only at a distance of half kilometre from Sadar Hospital. It was further submitted that from the medical examination report which is Annexure-2 to the petition, it would transpire that the doctor did not find any injury on any part of the body except mark of teeth bite over right cheek. With respect to the mark of teeth bite it was the opinion of the doctor that the injury may have been caused due to an attempt of sexual assault. It is submitted by learned counsel that there is no finding of rape and the only injury of teeth bite has been opined to be simple in nature. It is further submitted that the statement under section 164 Cr.P.C. of the victim is clearly tutored given at belated stage. The petitioner has no criminal antecedent and is in custody since 24.7.2019

The application for bail is opposed by learned APP for the State.

Having heard learned counsel for the parties and taking into consideration the submissions made on behalf of the appellant, the contents of the F.I.R. together with the injury report



as also the material that has transpired in course of investigation, this Court is not inclined to enlarge the appellant on bail for the present. As such, the instant appeal is rejected.

However, in the facts and circumstances of the case, the appellant may renew his prayer for bail on completing one year of custody.

(Partha Sarthy, J)

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