

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.1707 of 2021

Arising Out of PS. Case No.-147 Year-2020 Thana- RAJEPUR District- East Champaran

Nijamuddin Mian, Son of Suleman Mian, Resident of Village-Mahamadpur,
Sagar, P.S.- Rajepur, District-East Champaran at Motihari

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant	:	Mr. Abhishek Kumar, Advocate
For the State	:	Mr. Binay Krishna, Spl.PP

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

3 02-06-2021 This matter has been taken up today for consideration through video conferencing in view of resurgence of COVID-19 Pandemic.

The learned counsels are appearing and making submissions from their residence. The Court Master and Secretary are also part of this virtual Court proceedings from their homes, all with the aid of audio visual technology.

Heard learned counsel for the appellant and the learned Special P.P. for the State.

The appellant has preferred the present appeal under Section 14A(1) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 2015 (Act No.1 of 2016) against the refusal of his prayer for regular bail, vide order dated 16.12.2020 passed by the learned 7th Additional Sessions Judge-



cum-Special Judge, POCSO Act, Motihari, East Champaran, in connection with Rajepur P.S. Case No.147 of 2020 instituted for the offence under Sections 363, 366(A) of the I.P.C., Sections 4, 8, 12 of the POCSO Act and Section 3 (1),(v) of the SC/ST Act and also for setting aside the aforesaid order dated 16.12.2020.

The informant has alleged that on 23.10.2020 her minor daughter had gone to attend the call of nature, but she did not return till late in the night. Thereafter search was made, and she learnt that the appellant had taken her daughter away. Appellant has forcibly committed rape upon her and when she objected and was shouting, she was rescued by villagers of Village-Gopalpur.

Counsel for the appellant submits that the appellant and the alleged victim were having intimate relation since before, which was being opposed by the family members of the alleged victim. On account of such opposition, the appellant has been made an accused in the instant case. He has no criminal antecedents and is in custody since 26.10.2020.

This Court had earlier called for copy of the case diary, which has been received.

The attention of the Court is drawn to the statement of the alleged victim girl recorded in paragraph 45 of the case



diary. It is submitted that the same is at variance with the F.I.R. as well the statement of the victim recorded under Section 164 Cr.P.C. In her statement under Section 164 Cr.P.C., the victim has flatly denied any physical or sexual wrong committed by the appellant. The same belies the case of the prosecution and under such circumstances, the appellant continues to suffer custody.

Learned Special P.P. for the State has submitted that the victim girl is a minor and therefore, this Court may not allow the prayer for bail also in view of the fact that the appellant has been named specifically by the informant.

Considering the rival submissions, this Court is inclined to allow appellant's prayer for bail.

Accordingly, let the appellant, above named, be released on bail on furnishing bail bond of Rs.10,000/- (Ten thousand) with two sureties of the like amount each to the satisfaction of the learned by the learned 7th Additional Sessions Judge-cum-Special Judge, POCSO Act, East Champaran at Motihari, in connection with Rajepur P.S. Case No.147 of 2020.

In the result, the appeal is allowed and the impugned order dated 16.12.2020 is set aside.

This Court would expect that the appellant's counsel would honour his undertaking in the instant proceedings



regarding supply of the requisite court fee etc. within two weeks
from the date he is called upon to do so by the office.

(Madhuresh Prasad, J)

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