

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL APPEAL (SJ) No 1700 of 2021

Arising Out of PS. Case No.-365 Year-2020 Thana-MANIHARI District-Katihar

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Jammu Khan age 60 years Male S/O Dagebaj Khan, R/o Amirabad , Siz tola
P.S. Manihari, District Katihar

.. ... Appellant/s

Versus

The State of Bihar

... ... Respondent/s

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Appearance :

For the appellant : Mr.Sanjeev Kumar singh Advocate
For the State : Ms. Usha Kumari No1 Spl PP

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL ORDER

3 01-06-2021 In view of the sudden resurgence of Covid-19 infection, there is limited functioning of the High Court and, therefore, the matter has been listed today for consideration through virtual mode.

Heard learned counsel for the appellant and learned Spl PP for the State.

The appellant has preferred the present appeal under Section 14A(2) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for brevity , SC/ ST Act) against the refusal of his prayer for regular bail vide order dated 29.01.2021 passed by learned Additional Sessions Judge -7th - cum- special Judge, Katihar, in a case registered under Sections 376(AB) of the Indian Penal Code, Sections 3/6 of the POCSO Act and Sections 3(i)(r)(w)(1) and 3(2)(v) of SC/ST Act in connection with Manihari P.S. Case No. 365 of 2020.

The prosecution case is that the informant had gone to



earn his livelihood by discharging labour work. It is alleged that about 3 PM the appellant came and took away her daughter and committed rape upon her. The informant, thereafter, has gone to the house of the appellant where she has allegedly been abused by caste name and threatened with life.

The counsel for the appellant submits that the implication is on extraneous consideration due to subsisting land dispute. The false implication is apparent from the fact that allegation is of 14.12.2020, whereas the FIR has been lodged on 17.12.2020. On 19.12.2020, the alleged victim has been examined under Section 164 Cr. PC and also by the Medical Board. The Medical Examination does not corroborate the allegation of rape. No injury on body part has been found in the Medical Examination, and there is no sign of rape. The victim, in her statement recorded under Section 164 Cr.P.C., has also not supported the allegation of rape having been committed on her. She has merely stated that the appellant had made some vulgar remarks and that he had left after disrobing her. Such allegation are to be viewed with the fact in the background that the appellant is 60 years and the victim girl allegedly aged between 9 to 10 years old. Under such circumstances, having no criminal antecedents, appellant is in custody since 18.12.2020.

The learned Spl. PP for the State has opposed the prayer for bail by submitting that the allegations have been made by the informant in respect of the minor girl appellant is named in the FIR.

In my opinion, a case for grant of regular bail is made out. The impugned order dated 29.01.2021 passed in connection



with Manihari P.S. Case No. 365 of 2020, requires interference by this Court, which is, accordingly set aside.

Considering the rival submissions, this appeal is allowed. The impugned order dated 29.01.2021 passed by learned Additional Sessions Judge -7th - cum- special Judge, Katihar, in connection with Manihari P.S. Case No. 365 of 2020, is set aside.

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 Additional Sessions Judge -7th - cum- special Judge, Katihar, in connection with Manihari P.S. Case No. 365 of 2020, subject to the following conditions:-

(i) That one of the bailors will be a close relative of the appellant who will give an affidavit giving genealogy as to how he is related with the appellant. The bailor will also undertake to inform the Court if there is any change in the address of the appellant.

(ii) That the appellant will be well represented on each date and if he fails to do so on two consecutive dates, his bail bond will be liable to be cancelled.

shyambihari/-

(Madhuresh Prasad, J)

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