

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.1055 of 2020**

Arising Out of PS. Case No.-4 Year-2019 Thana- BAKHTIYARPUR RAIL P.S. District-
Patna

Srikant Das S/o Jangali Das R/o village- Poari, P.S.- Harnaut, District-
Nalanda

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellant/s	:	Mr. Vijay Bhushan Prasad, Advocate Ms. Usha Kumari Singh, Advocate
For the Respondent/s	:	Ms. Usha Kumari 1, Spl. P.P.

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

5 10-02-2021 Perused the letter no. 47/21 dated 06.02.2021
received from Rail P.P. Fatuha. The envelop enclosed therewith
has been opened by the Bench Officer in course of hearing of the
present application.

Heard learned counsel for the appellant and Ms. Usha
Kumari No.1, learned Special Public Prosecutor for the State.

The appellant, in the present case, is seeking setting
aside of the order dated 04.02.2020 passed in Special Case No.
36/2019 (arising out of Rail Bakhtiyarpur (Fatuha) P.S. Case No.
04/2019) under Sections 376/34/341/342/379/ 323/325 of the
Indian Penal Code and under Section 3(2)V(a) of the SC/ST
Atrocities Act, by which the prayer for regular bail of the appellant
has been rejected.

The prosecution story as narrated by the informant is
that on 18.01.2019 at about 7:30 P.M. she had boarded in Rajgir



Passenger Train at Rajendra Nagar to go to her house. When the said train stopped near western overbridge of Fatuha Station the appellant along with one another person forcibly pulled her down from the train at Fatuha, assaulted her and they took her to a bush, committed rape and then left her in a ditch after tying her hands and legs by her sari.

It is then alleged that after some time the informant was able to untie herself, came out of the ditch, she reached the Fatuha Railway Station and with the help of some passengers she took a train and reached her house at Bakhtiyarpur. On the next day i.e. 19.01.2019 she told the alleged occurrence to one women advisor of Women Special Cell whereafter she was brought to the police station and a written report was submitted. The informant is aged about 30 years and the information has been given to the police station on 19.01.2019 at 4.15 P.M. as regard to the alleged occurrence.

Learned counsel for the appellant submits that on a bare perusal of the written report it would appear that the same has been written by the said women advisor who has also put her signature as 'writer' of the report. The informant is an illiterate lady, no other family member had gone to the police station with her. In the last line, it has been inserted that the mobile number 9931340252 which belonged to the informant has been taken



away by the appellant and her white colour petticoat was lying there.

Learned counsel submits that later on police has shown recovery of the white colour petticoat from the alleged place of occurrence. The same was sent to the Forensic Science Laboratory, Government of Bihar, Patna. The FSL report clearly states "semen could not be detected in the Exhibit Mark A".

It is further stated that though the appellant is in custody for two years, his blood samples was never taken and no investigation was done on that basis. Learned counsel then submits that the appellant is innocent, he has been falsely implicated in this case and the entire story as narrated itself gives rise to a suspicion as there is no witness saying that he had seen this appellant and the other person forcibly taking away the informant at the Fatuha Railway Station. In her statement under Section 164 Cr.P.C. the victim has not said that there were two persons. The victim purposely did not disclose her relationship as wife of the cousin brother of the wife of this petitioner.

Learned counsel submits that not a single witness has seen this petitioner forcibly taking away the informant, though, Fatuha Station is a station on the main railway and almost all trains are stopping there, the Fatuha Station has also got a Rail Police Station but no such report was recorded at Fatuha Rail Police Station.

Learned Counsel further submits that according to the



victim she opened her tied legs and hands alone and reached the railway station but even at this stage there is no witness who has seen her coming out of bush or reaching the railway station in that condition and even at this stage no report has been made to the Fatuha Rail Police.

The victim says that she had taken a train from Fatuha Railway Station and reached Bakhtiyarpur on the same day but even after reaching Bakhtiyarpur Railway Station she did not go to Rail Police rather she went to her home and on the next day she narrated this story to the women advisor.

Learned counsel submits that in the First Information Report the informant has given her mobile number which was allegedly taken away by this appellant but the police has shown recovered a mobile phone, no Sim Number has been shown in that. In course of investigation the I.O. has not collected the location of the mobile number mentioned in the F.I.R. and/or of the mobile shown to have been recovered, after one month the informant claimed that she had given wrong Sim Number. There is no investigation on this point.

It is then submitted that after the death of her husband the informant did not live at Bakhtiyarpur either in her Sasural or her Naihar. The reasons for false implication is that an informatory petition was filed by the appellant on 19.11.2016 vide Informatory Petition No. 2130/2016 and also on 11.10.2018 vide Informatory Petition No. 2216/2018 before the learned Chief



Judicial Magistrate, Bihar Sharif at Nalanda in which the informant is named. The appellant has enclosed Annexure '6' & '7' with this application and has stated that she being the cousin brother's wife of the wife of this petitioner, he had helped her after death of her husband and also helped her in upbringing of her three children but because the appellant was demanding the money, when he was alone on 19.09.2018 the persons named in the application assaulted him. He has also narrated the kind of relationship of the informant with some others with whom she had gone.

Learned counsel for the appellant has submitted that it is for this reason that the appellant has been implicated in this false case. It is not possible that one person may forcibly take away a lady of 30 years age from a busy railway station. He has pointed out that even the medical examination report has assessed the age of the informant between 28-30 years, the allegation of assault and that she was thrown in a ditch are false as only superfluous kind of injury i.e. swelling and bruise on face has been noticed in the medical examination report. It is submitted that in the entirety of the facts and circumstances the informant is not a sterling kind of witness, there is no independent material to support the allegation against the petitioner.

Learned counsel for the appellant further submits that in this case though charge-sheet has been filed but no cognizance has been taken so far and in this respect specific



statement has been made in paragraph '8' of the application.

Ms. Usha Kumari No. 1, learned Special Public Prosecutor for the State has opposed the prayer for regular bail of the appellant. Learned Special P.P. has gone through the case diary, DNA report received from the Forensic Science Laboratory, Patna.

This Court called upon learned Special Public Prosecutor for the State to show from the case diary as to whether there is any witness on the point raised by the learned counsel for the appellant. After going through the case diary, learned Spl. P.P. agrees that there is no witness on that point. No other independent material has been placed before this Court.

Having regard to the facts and circumstances of the case, in the nature of the materials placed before this Court particularly that the alleged occurrence is said to have taken place at a busy place such as railway over-bridge from where the informant was allegedly forcibly taken away but there is no witness on that point, no report was made with the Rail Police with regard to the alleged occurrence on 18.01.2019, in the F.I.R. informant claims that two persons had taken her away to a bush and raped her but in her subsequent statement she is saying about only the petitioner, even on return there is no witness saying that the informant was seen at Fatuha Railway Station in such condition, the fact that instead of going to the police station at Fatuha or Bakhtiyarpur with her family members to register a



complaint in the matter, she chose to go to a women advisor on the next day and then the said women advisor has written the report and went to the police station, further that the FSL report and medical report do not corroborate commission of rape in terms as has been alleged by the informant, no injury has been found on the body suggesting that she was thrown in a ditch and that initially in the F.I.R. the informant had given a wrong Sim Number, the police while showing recovery of mobile from the petitioner did not disclose the Sim Number in the seizure list and later on after about one month when it was found that the Sim Number was not correct, the informant disclosed another Sim Number, still the location of the mobile has not been investigated by the I.O., in course of verification no criminal antecedent of the petitioner has been found and the co-villagers said that there was no complaint against the petitioner and the two informatory petitions disclosing the sour relationship between the appellant and the informant for the reasons stated therein and lastly that the appellant has remained in jail for over two years by now and the trial is not likely to come to an end in near future, in the opinion of this court further incarceration of the appellant with a view to punish him would neither be in aid of investigation or the prosecution, appearance of the appellant may be secured in course of trial, therefore, this Court sets-aside the impugned judgment and order dated 04.02.2020 and directs release of the appellant 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 District & Sessions Judge – VIII – cum – Special Judge, SC/ST Act, Patna in connection with Special Case No. 36 of 2019 (arising out of Rail P.S. Bakhtiyarpur (Fatuha) Case No. 04/2019, subject to the condition as laid down under Section 437 (3) 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, of 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 the court below shall verify the criminal antecedent of the appellant and in case at any stage it is found that the appellant has concealed his criminal antecedent, the court below shall take step for cancellation of bail bond of the appellant. However, the acceptance of bail bonds in terms of the above-mentioned order shall not be delayed for purpose of or in the name of verification.

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.

And further condition that the appellant shall attend the trial court on each and every date fixed in the matter. Two consecutive defaults in putting appearance in course of trial would invite cancellation of bail bond of the petitioner.

Let the DNA report kept in an envelope and the same may be received by the I.O.

Case diary is taken on the record.

This application stands allowed.

(Rajeev Ranjan Prasad, J)

Rajeev/-

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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'.

