

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.2315 of 2021

Arising Out of PS. Case No.-1 Year-2021 Thana- AAYAR District- Bhojpur

Mahabir Yadav, aged about 21 years, Male son of late Rajendra Yadav
resident of village Ayar, P.S. Ayar, District-Bhojpur.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

For the appellant	:	Mr. Bimlesh Kumar Pandey, Advocate
For the State	:	Mr. Binay Krishna Spl PP

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

3 15-07-2021 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.

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

3. Learned counsel for the appellant is expected to honour his undertaking given in the instant case for depositing the requisite court fee and to remove the defects as pointed out by office when called upon to do so by the office

4. 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 27.02.2021, passed by learned Additional Sessions Judge VI, Ara, Bhojpur, in a case registered under Section 376 of the Indian Penal Code and Sections 3(i)(r)(s)(w)(i)(ii) and 3(2)(va) of the SC/ST Act and Section 4 of the POCSO Act in connection with POCSO Case No. 2 of 2021, arising out of Ayar PS Case No.01 of 2021.



5. The informant has stated that when she was collecting cow dung from the cattle shed, the appellant has caught her from behind and thereafter has committed rape. The informant, thereafter, has raised an alarm when her cousin and sister-in-law have reached the place. Thereafter altercation ensued between both sides and the instant appellant managed to flee away.

6. The learned counsel for the appellant submits that from the materials collected during the course of investigation, specially the Medical Report and the Certificate issued by the Bihar School Examination Board in favour of the informant, wherein, her date of birth has been recorded as 2004, it is apparent that the informant was in between 17 to 19 years on the date of alleged occurrence. The prosecution case is highly improbable as it is alleged at 1:00 PM in the afternoon still there is no independent witness coming forward to say that they have heard the noise or seen the appellant fleeing away from the house in-question. The alarm also has allegedly been raised by the victim after the rape had been committed and not prior thereto. Such allegations may be viewed with the fact in the background that the appellant and informant were on talking terms since before, and, therefore, the prosecution case is highly doubtful. The appellant bears no criminal antecedent. Further, the Medical Report does not show any evidence of recent intercourse though the Medical Examination has been done, as per the Case Diary, just next day after lodging of the F.I.R.

7. The learned Spl PP appearing for the State has opposed the prayer for bail. It is submitted that the direct allegation of committing rape on the minor has been made by the minor herself against the appellant.



8. Considering the rival submissions and the fact that the petitioner has now been in custody since 04.01.2021, in my opinion, a case for grant of regular bail is made out. The impugned order dated 27.02.2021; passed in connection with POCSO case no. 2 of 2021, arising out of Ayar PS Case No.01 of 2021, requires interference by this Court, which is, accordingly set aside.

9. Considering the rival submissions, this appeal is allowed. The impugned order dated 27.02.2021, passed by learned Additional Sessions Judge VI, Ara, Bhojpur, in connection with POCSO case no. 2 of 2021, arising out of Ayar PS Case No.01 of 2021, is set aside.

10. 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 District and Sessions Judge VI, Ara, Bhojpur, in connection with POCSO Case No. 2 of 2021, arising out of Ayar PS Case No.01 of 2021, 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.

(Madhuresh Prasad, J)

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