

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.3041 of 2021

Arising Out of PS. Case No.-18 Year-2021 Thana- MAHILA PS District- Gaya

SRI KAMLA KANT PRASAD @ KAMLA KANT PRASAD Son of Vishwanath Prasad the then S.D.P.O., Heard Quarter -3 at present S.D.P.O. Constable Sub Selection Board (A) Block, 6th Floor, Sardar Patel Bhawan, District - Patna.

... .. Appellant/s

Versus

THE STATE OF BIHAR Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Yogesh Chandra Verma, Sr. Advocate Mr. Anuj Kumar, Advocate
For the Respondent/s	:	Mr. S.D. Yadav (AAG-9) Ms. Usha Kumari 1, Spl. PP
For the Victim	:	Mr. Amit Shrivastava, Sr. Advocate Mr. Mritunjay Kumar, Advocate Mr. Girish Pandey, Advocate

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL ORDER

3 07-10-2021 Heard Mr. Yogesh Chandra Verma, learned Senior Advocate for the appellant and Ms. Usha Kumari-1, Spl. PP and Mr. S.D. Yadav, learned AAG-9 for the State. Mr. Amit Shrivastava, learned Senior Advocate assisted by Mr. Mritunjay Kumar, learned Advocate have appeared for the victim.

The appellant has challenged the order dated 05.07.2021 passed by the learned ADJVI-cum-Exclusive Special Judge (POCSO Act), Gaya in A.B.P. No. 1469 of 2021 (S.J.)/12 of 2021 arising out of Mahila P.S. Case No. 18 of 2021, whereby the prayer made on behalf of the appellant for grant of pre-arrest bail for the offences



under Sections 376(2)(a)(iii)/376(2)(b)/376(3) of the Indian Penal Code, Sections 6/9(i)(c) of the POCSO Act and Sections 3(2)(v) of the SC/ST (Prevention of Atrocities) Act has been rejected.

This Court had, *vide* order dated 25.08.2021, called for the case diary and had granted provisional bail to the appellant.

Today, when the matter was heard, a preliminary objection was raised by Mr. S.D. Yadav, learned AAG-9, Mr. Amit Shrivastava, learned Senior Advocate and Ms. Usha Kumari-I, learned Spl. PP that this memo of appeal would not be maintainable as the order impugned has been passed by the POCSO Court.

It has been submitted that in view of the judgment passed by this Court in *Guddu Kumar Yadav vs. State of Bihar*, reported in 2019(4) PLJR 1214, any application rejecting the prayer for bail (Anticipatory or Regular) would be maintainable before this Court only under the provisions contained in Sections 438/439 of the Code of Criminal Procedure.

It has further been submitted that merely because the victim girl happens to be a member of the SC/ST community, it will not *ipso-facto* attract the mischief of that special Act also.

This petition would thus not be maintainable as



an appeal under Section 14(A) of the SC/ST (Prevention of Atrocities) Act.

The reason for saying so is that both the POCSO Act and the SC/ST (Prevention of Atrocities) Act are special Acts, but the POCSO Act is later in origin.

The impugned order has been passed by the specially constituted POCSO Court.

Though some arguments were advanced on the merits of the case also, but in view of such a preliminary objection, Mr. Yogesh Chandra Verma, learned Senior Advocate in his wisdom and on instructions from his client, seeks permission to withdraw this application in order to enable him to approach the Court in an appropriate forum.

This appeal is permitted to be withdrawn with the liberty aforesaid.

Needless to state that the interim order dated 25.08.2021 passed by this Court also stands vacated.

(Ashutosh Kumar, J)

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