

**IN THE HIGH COURT OF JUDICATURE AT PATNA
(FROM RESIDENTIAL OFFICE VIA VIDEO APPLICATION)
CRIMINAL APPEAL (SJ) No.3180 of 2021**

Arising Out of PS. Case No.-73 Year-2021 Thana- RAGHUNATHPUR District- Siwan

Chandan Rajbhar @ Chandan Kumar Rajbhar, S/O Tuntun Rajbhar @ Tuntun
Bhar, R/O Village-Mahrauli, P.S-Raghunathpur, District-Siwan

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellant/s : Mr.Harendra Prasad, Advocate

For the Respondent/s : Mrs. Usha Kumari 1, Spl. P.P.

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

3 21-09-2021 Heard learned counsel for the appellant and Mrs.
Usha Kumari 1, learned Special P.P. for the State.

The appellant in the present case is seeking setting aside of the order dated 22.06.2021 passed in Raghunathpur P.S. Case No. 73 of 2021 registered for the offence punishable under Section 376(D) of the Indian Penal Code and Sections 3(i)(r)(s), 392)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act by learned 1st Additional District and Sessions Judge, Siwan whereby and whereunder the prayer for regular bail of the appellant has been rejected. He is in custody since 13.05.2021. The appellant has otherwise no criminal antecedent.

As per the prosecution story, the victim aged about 20

years had gone to ease out during the night hours at 8.00 P.M. on 09.05.2021 in an orchard situated at a distance of 200 gaj from her house. It is alleged that the four named accused persons were there from before and as the victim wanted to move out quickly, the co-accused Sandeep and this appellant came to her and pulled her by her hands and tried to commit wrong act forcibly. At this stage co-accused Abhishek and Sashi started taking her photographs and threatened her if she will disclose it to anybody her photo will be made viral. Thereafter, all the four committed rape on her.

Learned counsel for the appellant submits that the appellant is a co-villager and in the present case the alleged occurrence is said to be of 09.05.2021, however, the information has been furnished to the Police Station on 11.05.2021 which would be evident from the entries made in the F.I.R.

It is his submission that in her specific statement under Section 161 Cr.P.C. and 164 Cr.P.C. the victim girl has not made specific allegation of commission of rape against this appellant. She has alleged that this appellant was one along with the co-accused pulled her by her hands. It is further pointed out that subsequently the victim girl has stated that when she had gone to ease out she was accompanied by her friend but her

friend has not been examined by the I.O. The I.O. has not recovered any video or photograph and the medical examination report does not find any injury on the body of the victim and no recent sign of sexual act has been found by the Doctor.

Mrs. Usha Kumari 1, learned Special P.P. for the State has opposed the prayer for bail of the appellant, however, while going through the case diary learned Special P.P. has informed this Court that in her 161 Cr.P.C. and 164 Cr.P.C. statement the victim girl has not made specific allegation of commission of rape against this appellant. She has further informed that the medical examination report does not reveal any injury on her body and further the medical report says that there is no recent sign of sexual act.

On query of this Court, learned Special P.P. has further informed that the I.O. has not seized any cloth of the victim girl and there is no material for FSL report.

Having regard to the facts and circumstances of the case wherein this Court has noticed that in the F.I.R. there are allegations of commission of rape by all the four accused but the F.I.R. has been lodged on 11.05.2021 and in her subsequent statement under Section 161 and 164 Cr.P.C. the victim has not made specific allegation of commission of rape against this

appellant, the medical examination report is not saying about any injury or any sign of recent sexual act, no photograph or video allegedly prepared could be found in course of investigation by the I.O. and the cloth of the victim has not been seized or sent to FSL, this Court is inclined to accept the submissions of learned counsel for the appellant that it may be a case of over implication of the accused, considering that the investigation against the appellant is complete and he has otherwise no criminal antecedent, this Court sets-aside the impugned order and directs release of the appellant above named 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 1st Additional District and Sessions Judge, Siwan in connection with Raghunathpur P.S. Case No. 73 of 2021, subject to the condition as laid down under Section 437 (3) Cr.P.C.

And further condition that after release on bail, the appellant shall not come in contact with the informant/victim and her family during trial and violation of this condition shall invite action towards cancellation of bail.

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.

This appeal stands disposed of accordingly.

(Rajeev Ranjan Prasad, J)

vats/-

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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'.