

**IN THE HIGH COURT OF JUDICATURE AT PATNA
(FROM RESIDENTIAL OFFICE VIA VIDEO APPLICATION)
CRIMINAL APPEAL (SJ) No.104 of 2021**

Arising Out of PS. Case No.-498 Year-2019 Thana- SHERGHATI District- Gaya

PINTU KUMAR @ PINTU PANDEY Son of Murli Pandey Resident of Village - Lembo Garha, P.S.- Barachatti, Distt.- Gaya. At present resident of in rented House of Rejendra Village Amarut.

... .. Appellant

Versus

The State of Bihar Bihar

... .. Respondent

Appearance :

For the Appellant/s	:	Mr. N.K. Agrawal, Sr. Advocate Mr. Akhilesh Dutta Verma, Advocate
For the Respondent/s	:	Mr. Binay Krishna, Spl.P.P.

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

8 31-08-2021 Heard Mr. N.K. Agrawal, learned Senior Counsel for the appellant assisted by Mr. Akhilesh Dutta Verma, learned Advocate and Mr. Binay Krishna, learned Special Public Prosecutor for the State.

Appellant, in the present appeal, is seeking setting aside the order dated 15.09.2020 passed by learned Exclusive Special Court Judge (POCSO Act), Gaya passed in POCSO Case No. 118/2019 arising out of Sherghati (Dobhi) P.S. Case No. 498 of 2019 registered for the offence under Section 376 of the Indian Penal Code, Section 3(i)(r)(s), 2(v-a) of SC/ST (POA) Act and 4/6 of POCSO Act.

Learned Senior Counsel for the appellant submits that in the First Information Report it is alleged that the grand daughter ('X') aged about 14 years of the informant had gone to Matanmore

for purchasing vegetables on 21.10.2019 at about 4:30 P.M. but when she did not return home then he along with his neighbours went in search of her and after sometime he came to know that the door of the house of this appellant is closed for a long time whereupon when he went there and got opened the door then he found the appellant in a Gamcha and his grand daughter was lying on the bed, her mouth was tied and after seeing this the appellant was assaulted by the villagers who were there. Allegation is that this appellant committed rape on her.

Learned Senior Counsel for the appellant submits that no doubt the allegation against the appellant is serious in nature but this court may consider for the present the materials collected in course of investigation including that the age of the victim girl has been understated by her grandfather only in order to make the case serious and to bring it within the ambit of the POCSO Act.

Learned Senior Counsel submits that the victim girl is aged above 19 years and this has been found by the medical report as well which would be evident from medical board report dated 25.08.2021 submitted by the Civil Surgeon, Gaya. Learned Senior Counsel further submits that in fact in the medical examination report issued on 22.10.2019 also the victim girl has been assessed above 19 years old.

It is further submitted that in view of the submissions of

learned Senior Counsel that the victim's age has been reported as 19 years in the medical examination report, this court had called for a report from the Civil Surgeon, Gaya and once again it has come that she is above 19 years of age. The medical examination report which was conducted at the relevant time records no sign of recent sexual intercourse, though sexual intercourse in past cannot be ruled out.

It is the submission of learned Senior Counsel that the case has been given a different colour and the fact that the grand daughter of the informant was major and on the date when it is alleged that she was found in the room of the appellant no sign of sexual intercourse has been found by the doctor clearly demonstrate that the appellant has been framed in this case, may be on suspicion of having relationship with the grand daughter of the informant.

The statement of the informant that he came to know that the door of the room of this appellant is closed for some time and thereafter he reached there only indicates that the informant was perhaps aware of some sort of relationship between the appellant and the grand daughter of the informant ('X').

Learned Senior Counsel submits that it is not the prosecution case that the victim was seen being taken away forcibly by this appellant. Again it is highly improbable that the

appellant will open the door in such condition.

Mr. Binay Krishna, learned Special P.P. for the State has though opposed the prayer for bail of the appellant but in course of submission, learned Special P.P. has informed this Court that in course of her statement under Section 164 Cr.P.C. the victim girl has come out with a statement that while she was returning after taking vegetable this appellant pressed her mouth and took her to his room. In course of investigation, however, no witness has turned up to say that anybody had seen the appellant taking away the victim girl by pressing her mouth.

Learned Special P.P. has further confirmed to this Court that in the case diary it is recorded that on the date of medical examination i.e. on 22.10.2019, the victim girl was 19 years old and the doctors have opined that there is no sign of recent sexual intercourse, though sexual intercourse in past cannot be ruled out.

Mr. Binay Krishna, learned Special P.P. further informed that although some cloths were seized from the spot by the I.O. but those were not sent to the FSL for report and as such no FSL report is available suggesting any sign of rape.

Considering the facts and circumstances of the case wherein this Court has noticed that there is a consistent report saying about the age of the victim being 19 years and above 19 years, according to the victim at this stage she was forcibly taken

away by pressing her mouth when she was returning after purchasing the vegetable but there is no witness on this point, the informant claims to have come to know about close door of the appellant's room and on this he reached there, the medical examination report which was conducted on the same day does not show any sign of recent sexual intercourse and there is no FSL report suggesting rape on the victim, the charge-sheet has been filed and the appellant has remained in custody for almost two years, in the circumstances this Court sets-aside the impugned order 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 Exclusive Special Court Judge (POCSO Act), Gaya in connection with POCSO Case No. 118/2019 arising out of Sherghati (Dobhi) P.S. Case No. 498/2019, subject to the condition as laid down under Section 437 (3) Cr.P.C.

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 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.

(Rajeev Ranjan Prasad, J)

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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'.