

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.202 of 2021**

Arising Out of PS. Case No.-38 Year-2019 Thana- SUGAULI RAIL P.S. District- West
Champaran

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TUNNU SAH @ TUNNA SAH Son of Bulena Sah Resident of Village -
Saharswa, P.S.- Gopalpur, District - West Champaran.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

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Appearance :

For the Appellant/s : Mr.Sanjay Kumar No 7,Advocate

For the Respondent/s : Mr.Binay Krishna No.1, Spl.P.P.

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

3 17-03-2021 Heard learned counsel for the appellant and learned
Spl.P.P. for the State.

The appellant in the present case is seeking setting aside of the order dated 10.02.2020 passed in Regular Bail Petition No. 138 of 2020 arising out of Rail Sugauli Bettiah, P.S. Case No. 38 of 2019 registered for the offence punishable under Section 376(b), 376(c)/34 of the Indian Penal Code under Section 4/6 of the POCSO Act and under Section 3(i)(XII) of the SC/ST (POA) Act by learned 1st Additional District & Sessions Judge-Cum-Special Judge, SC/ST POCSO, Bettiah, West Champaran whereby and whereunder the regular bail of the appellant has been rejected.

Learned counsel for the appellant submits that the appellant and the victim girl were in love affair and have performed marriage which would be evident from the statement given by the victim girl duly recorded in paragraph '99' of the case diary. In her



statement recorded on 17.11.2017, the victim girl has stated that she was not kidnapped by anyone and the case lodged against the appellant is false. She was living with her husband and she wanted to live with him.

Learned counsel further submits that the age of the victim girl was assessed on 20.11.2017 and the doctors had opined that the age of the victim girl is in between 17-18 years. It is, however, submitted that so far as the present case is concerned, the allegations against the petitioner are false and flimsy allegations. The victim girl is major and, therefore, the allegation of rape cannot be leveled against the appellant.

On the other hand, learned Spl.P.P. for the State has opposed the prayer for regular bail of the appellant. It is submitted that in connection with the first case the appellant did not surrender for a long time which would be evident from the impugned order. While absconding in the first case, the appellant had been involved in the alleged occurrence which took place while the victim girl was travelling on 07.01.2019 from Gaighat Patna to Bettiah.

It is submitted that as per the school leaving certificate the age of the victim girl would be less than 15 years on the alleged date of occurrence. The case is fixed for evidence as per the report received from the learned trial court and, therefore, at this stage the appellant does not deserve privilege of regular bail.

Having regard to the facts and circumstances of the case,



the materials noticed by the learned trial court in the impugned order showing that the appellant was absconding in Kangli P.S. Case No. 66 of 2017 and in the said case a non-bailable warrant of arrest was issued against him on 07.09.2019, the present occurrence took place while the victim girl was travelling on rail and the school leaving certificate of the victim girl shows her date of birth 05.03.2004, the case is in the learned trial court is fixed for evidence, in the nature of the materials present, this Court is not inclined to interfere with the impugned order. The prayer for regular bail of the appellant is, thus, refused.

Let the trial be expedited.

The trial court is expected to proceed with the trial on day-to-day basis and conclude it preferably within six months from the date of receipt/production of a copy of this order.

If the trial remains unconcluded for no reasons attributable to the appellant, he may renew his prayer for bail.

The appeal stands disposed of accordingly.

(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'.

