

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No. 58 of 2021

Arising Out of PS Case No.-64 Year-2019 Thana- KHANPURA District- Samastipur

1. Mukesh Kumar Mahto @ Mukesh Kumar, aged about 26 years (Male) Son of Mahavir Mahto @ Mahabir Mahto.
2. Ranjeet Mahto, aged about 30 years (Male) Son of Mahavir Mahto @ Mahabir Mahto, Both resident of Village - Kahari Tole, Khajraj, PS- Khanpur, District – Samastipur.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Binay Kumar Mishra, Advocate
For the Respondent/s	:	Mr. Sadanand Paswan, APP

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 09-06-2021

The matter has been heard *via* video conferencing.

2. The case has been taken up out of turn on the basis of motion slip filed by learned counsel for the appellants yesterday, which was allowed.

3. Heard Binay Kumar Mishra, learned counsel for the appellants and Mr. Sadanand Paswan, learned Additional Public Prosecutor (hereinafter referred to as the ‘APP’) for the State.

4. The present appeal is directed against the order dated 25.08.2020 passed by the learned Additional Sessions Judge-VI cum-Special Judge (POSCO) Samastipur in ABP No. 638 of 2020 by which prayer for anticipatory bail of the appellants has been rejected.



5. The appellants apprehend arrest in connection with Khanpur PS Case No. 64 of 2019 dated 28.05.2019, instituted under Sections 341, 323, 366A, 506 and 376(A)(B) of the Indian Penal Code; 4 of The Protection of Children from Sexual Offences Act, 2012 and 3(1)(r)(s)(w)(i) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989.

6. The allegation against the appellants, who are brothers, and their two other brothers, is that they had abducted the informant from a field and had taken her to the railway station and made her board the train with co-accused Pappu Sharma and thereafter the allegation is against the said Pappu Sharma with regard to him taking her to Delhi and then Punjab and also committing rape on her.

7. Learned counsel for the appellants submitted that they are the agnates of the victim and have been falsely implicated only on suspicion. It was submitted that even the FIR was not lodged by the appellants, though the girl is said to have been abducted on 22.05.2019 and she returned on 27.05.2019 and thereafter on 28.05.2019, the FIR was lodged. It was submitted that even as per the FIR, the only role attributed to the appellants is of abducting her and taking her to the railway station. Learned counsel submitted that police had submitted charge-sheet with



regard to two other brothers of the appellants who are facing trial and against the appellants it was shown that investigation is still going on. It was submitted that the informant has also stated in her deposition in the trial of the other two brothers of the appellants that even Pappu Sharma was there at the time of abduction and there were four other persons but she has clearly stated that she could not recognize them. Learned counsel submitted that the girl has further deposed that the two brothers against whom the trial was going on, were her uncles and that due to some misconception, their name had been given in the FIR, but they were not involved. It was submitted that the appellants were also full brothers of the said two accused and because the trial was going on against those two accused, the informant had only taken their name. Learned counsel submitted that even the father of the informant, in his deposition in the said trial has taken the name of all the four brothers, including the appellants, that they are related and were not involved. Learned counsel submitted that the doctor, in the medical report, has indicated that the age of the girl was between 16-17 years. He submitted that the appellants have no criminal antecedent.

8. Learned APP submitted that the allegation against the appellants is that they had abducted her from the field. However,



he could not controvert the fact that the informant and her father have given a clean chit to the appellants in the trial which is going on against the two full brothers of the appellants who are also co-accused and similarly situated.

9. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, in the event of arrest or surrender before the Court below within six weeks from today, the appellants be released on bail upon furnishing bail bonds of Rs. 25,000/- (twenty five thousand) each with two sureties of the like amount each to the satisfaction of the learned Additional Sessions Judge-VI (POSCO) Act, Samastipur in Khanpur PS Case No. 64 of 2019 subject to the conditions laid down in Section 438(2) of the Code of Criminal Procedure, 1973 (i) that one of the bailors shall be a close relative of the appellants, and (ii) that the appellants shall co-operate with the police/prosecution and the Court. Any violation of the terms and conditions of the bonds or the undertaking or failure to co-operate shall lead to cancellation of their bail bonds.

10. It shall also be open for the prosecution to bring any violation of the foregoing conditions of bail by the appellants, to the notice of the Court concerned, which shall take immediate



action on the same after giving opportunity of hearing to the appellants.

11. The appeal stands allowed in the aforementioned terms.

(Ahsanuddin Amanullah, J.)

P. Kumar

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