

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.606 of 2022

Arising Out of PS. Case No.-144 Year-2021 Thana- FALKA District- Katihar

KAJU RAJ S/o Md. Nazir R/o village- Falka Bazar, P.S.- Falka, District-
Katihar

... .. Appellant/s

Versus

1. The State of Bihar
2. Sunita Devi Wife of Fulo Ram @ Kulo Ram Resident of village-Gopal patti
Nahar tola, P.S.- Falka, Dist- Katihar.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Raghvendra Kumar Singh, Advocate
For the Respondent/s : Mr. Usha Kumari 1, Special P.P.

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

- 5 16-11-2022 1. Heard learned counsel for the appellant and learned
Special P.P. for the State, on point of admission and on
merit also.
2. The appellant has preferred the present appeal
under Section 14A(2) of the Scheduled Castes and
Scheduled Tribes (Prevention of Atrocities) Act, 1989
(hereinafter referred to as “the Act”) against the refusal of
prayer for bail vide order dated 05.07.2021 passed by the
learned Special Judge (POCSO) Court-cum-Additional
Sessions Judge-VII, Katihar in connection with Falka P.S.
Case No. 144 of 2021 registered under Sections 376(D),
504, 506 and 34 of Indian Penal Code, Sections 3(i)(r)(s)



(w), 3(2) (v) of SC/ST Act and Section 4 and 6 of the POCSO Act.

3. Present appeal is well within limitation as prescribed under Section 14A(3) of the Act.
4. Notice has been issued to Respondent no.2, served upon and failed to join the present proceeding.
5. The appellant is named in F.I.R. and is in custody since 12.05.2021.
6. The allegation against the appellant is to rape/penetrative sexual assault upon the daughter of informant along with other co-accused persons, while she went to attend natural call along with the informant.
7. Learned counsel for the appellant submitted that appellant has been falsely implicated in the present case, due to local disputes and differences. It is submitted that even while recording the statement of victim under Section 164 of the Cr.P.C., a suspicion was raised that it may this appellant who committed rape/penetrative sexual assault upon her along with other co-accused persons. It is further submitted that on medical examination the hymen of victim was found intact, negating any penetration and as such commission of rape/penetrative sexual assault is



appearing false on its face. It is also submitted that the matter has been compromised between the parties and during trial the victim and mother of the victim, who is the informant of the case, turns hostile. It has further been submitted that from bare perusal of FIR, it appears that there is no overt act against the appellant, which attracts atrocities within the meaning of the Act. While concluding the argument, it is submitted that appellant is a man of clean antecedent and moreover, investigation of this case has been completed, for which, charge-sheet has already been submitted, as such, there is no chance of tampering with the evidence.

8. Learned counsel for the appellant submitted that if insult is not caused to complainant/informant on the basis of caste, no case is made out under the Act, as it was held in *State of Madhya Pradesh Vs. Parasram @ Purushottam, as reported in 2015 (153) AIC 276.*

9. Learned Special P.P. for the State, while opposing prayer for bail, submitted as offence alleged is non-compoundable, therefore, compromise arrived between parties is of no bearing the merit of the case, but fairly conceded the fact that a suspicion was raised through



statement of victim as recorded under Section 164 of the Cr.P.C., whether this appellant was committed rape/penetrative sexual assault, upon her.

10. In view of the submissions, as made above and by taking note of statement of victim as recorded under Section 164 of the Cr.P.C., creating a doubt over this petitioner regarding commission rape/penetrative sexual assault upon her coupled with the fact that charge-sheet has already been submitted, let the appellant, above named, is directed to be released on bail in connection with Falka P.S. Case No. 144 of 2021 on furnishing bail bond of Rs.10,000/- (Rupees Ten Thousand) with two sureties of the like amount each to the satisfaction of learned Special Judge (POCSO) Court-cum-Additional Sessions Judge-VII, Katihar, subject to conditions, as mentioned under Section 437(3) of the Cr.P.C.

11. Accordingly, impugned order dated 05.07.2021 is set aside.

12. Hence, appeal stands allowed.

(Chandra Shekhar Jha, J)

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