

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.3917 of 2021**

Arising Out of PS. Case No.-321 Year-2020 Thana- TRIVENIGANJ District- Supaul

MD SUBHAN @ SUBHAN MIYAN Son of Md. Sadik Miyan @ Natay
Miyan Resident of Village - Purandaha, P.s.- Triveniganj, and Distt.- Supaul.
... .. Appellant

Versus

1. THE STATE OF BIHAR
2. Kalpana Kumari Daughter of Musharu Sardar Resident of village- Vijitpur
Tola Bhatmanga ward no-01, P.S.-Triveniganj, Dist- Supaul.
... .. Respondents

Appearance :

For the Appellant/s : Mr.Sanjeev Verma
For the Respondent/s : Mr.A.G

**CORAM: HONOURABLE MR. JUSTICE NAWNEET KUMAR
PANDEY**

ORAL ORDER

4 05-09-2022 Learned counsel for the appellant is directed to remove
all the defects pointed out by the Stamp Reporter within one month.

Heard learned counsel for the appellant as well as learned
counsel for the informant.

This appeal has been preferred on behalf of the appellant
under Section 14-A(2) of the Scheduled Castes and Scheduled Tribes
(Prevention of Atrocities) Act for setting aside the order dated
19.07.2021 passed by the learned Additional District & Sessions
Judge-VI, Supaul in arising out of Triveniganj P.S. Case No. 321 of
2020, registered for the offences punishable under Sections 376
(D)/506 of the Indian Penal Code & Section 4 of the POCSO Act,
2012 and Section 3(2)(V) of SC and ST (Prevention of Atrocities)
Act, 1989 whereby the prayer for anticipatory bail of the appellant
has been rejected.



The prosecutrix, as per FIR, is 11 years old girl. When she was sleeping in her house along with her mother and grandmother, two persons entered into her house and after gagging her mouth dragged her 500 yards away in the western direction in the field of paddy and they committed rape upon her. She disclosed one of the persons as appellant Subhan Miyan whereas the second culprit was not known to her. They also threatened her.

Learned counsel for the appellant has submitted that the prosecutrix in her affidavit has stated that there was some dispute between the appellant and the mother of the prosecutrix, as such, the appellant came to her house only with intent to threaten and assault her mother. On hue and cry he fled away therefrom.

The prosecutrix as per fardbeyan is 11 years old girl. There is specific allegation that appellant along with co-accused committed rape upon her. The case has also been registered under the provisions of POCSO Act including 376(D) of the IPC. The medical report does not exclude the possibility of rape. As such, it is not a fit case for anticipatory bail. Accordingly, it is rejected.

Office shall ensure that all defects are removed by the appellant within the stipulated time provided in para-1 hereinabove, failing which the matter shall be brought to the notice of this Court.

(Nawneet Kumar Pandey, J)

Sonali/Kundan

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