

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.4529 of 2021**

Arising Out of PS. Case No.-73 Year-2021 Thana- RAGHUNATHPUR District- Siwan

Shasi Kumar Rajbhar @ Shasi Kumar Rai, S/o Vinod Rajbhar R/o village-
Maharauli, P.S.- Raghunathpur, District- Siwan

... .. Appellant/s

Versus

1. The State of Bihar
2. Neha Kumari daughter of Muneshwr Manjhi R/o village- Mahrauli, P.s.-
Raghunathpur, District- Siwan

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Harendra Prasad, Advocate
For the Respondent/s : Mr.Binay Krishna, Spl.P.P.

**CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT**

Date : 21-07-2022

Heard learned counsel for the appellant and learned
counsel for the State.

Let the defect (s), as pointed out by the office, be
removed within a period of four weeks from the date of
resumption of physical filing and physical removal of defect.

This is an appeal under Section 14(A)(2) of the
Scheduled Castes and Scheduled Tribes (Prevention of
Atrocities) Act, 1989 against the refusal of prayer for bail by
order dated 23.10.2021 passed by the learned 1st Additional
Sessions Judge-cum-Special Court, Siwan in connection with
Raghunathpur P.S. Case No. 73 of 2021 registered under Section



376 (D) of the Indian Penal Code and Section 3(1) (r) (s) of the SC/ST Act.

The prosecution case is that the appellant and three other co-accused persons waylaid the victim when she went out to attend natural call and the petitioner and the co-accused persons took some photographs of the victim informant and threatened her if she would disclose it to anybody, her photo would be made viral and then all four committed rape with her.

Learned counsel for the appellant submits that the appellant is innocent and has been falsely implicated in this case. For the alleged occurrence of 09.05.2021, the FIR has been registered on 11.05.2021 i.e., after a delay of two days. In the statements made under Sections 161 and 164 Cr.P.C., the victim girl has not named this appellant who committed rape with her. In her statement under Section 161 Cr.P.C., the victim has alleged that the appellant was present at the spot. He along with other co-accused persons put her under restraint and also threatened the cousin of the victim girl. In her statement under Section 164 Cr.P.C., the allegations against the appellant is that of sexually assaulting the victim and hitting her on her face. So the victim girl has changed her statement and did not say anything about committing of rape by this appellant.



Furthermore, in the FIR, the victim girl did not say anything about her cousin going with her when she went to ease her out, but she stated about her presence in her subsequent statements under Sections 161 and 164 Cr.P.C. But during investigation, the police did not record the statement of her cousin. Though it has been alleged that photographs were taken, but none was recovered. The medical examination report does not find any injury on the body of the victim or any recent sign of sexual activity. Learned counsel further submits that the petitioner is a student and his career is at stake due to false accusations. Learned counsel further submits that similarly situated co-accused Chandan Rajbhar has been granted bail by a Coordinate Bench of this Court vide order dated 21.09.2021 passed in Cr. Appeal (SJ) No. 3180 of 2021 and the appellant is in custody since 29.07.2021.

Learned Special PP opposes the prayer for bail submitting that the victim girl in the FIR named this petitioner as one of the culprits, who committed rape upon her. However, he concedes that in her statement under Sections 161 and 164 Cr.P.C., there is no allegation of rape against this petitioner.

Perused the records.

Having regard to the submissions made here-in-above



and considering the facts and circumstances specially the delay in lodging the FIR and the statement recorded under Sections 161 and 164 Cr.P.C. wherein no specific allegation of rape has been made against this petitioner and further considering the absence of injury on the body of victim or any sign of recent sexual activity and further considering the fact that co-accused has been granted bail and the appellant is in custody since 29.07.2021, let the appellant, above named, be released on bail, on furnishing bail bonds of Rs. 20,000/- (Twenty thousand) with two sureties of the like amount each to the satisfaction of the 1st Additional Sessions Judge, Siwan in connection with Raghunathpur P.S. Case No. 73 of 2021 subject to the following conditions:

- (i) One of the bailors will be a close relative of the petitioner, preferably one of the parents.
- (ii) The petitioner will remain present on each and every date fixed by the court below.
- (iii) The petitioner will not in any way contact either the victim or any of the witnesses and will not try to influence the trial.
- (iv) In case of absence for three consecutive dates or in violation of the terms of the bail,



the bail bond of the appellant will be liable to
be cancelled by the court concerned.

Accordingly, the impugned order is set aside and the
appeal is allowed.

(Arun Kumar Jha, J)

V.K.Pandey/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	25.07.2022
Transmission Date	25.07.2022

