

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.437 of 2023

Arising Out of PS. Case No.-76 Year-2022 Thana- MAHILA P.S. District- Samastipur

Chhotu Kumar @ Risikesh Kumar Jha S/o Suresh Jha, Resident of Village-
Ward No.- 16, Parsaram, Balipur, P.S.- Hathouri, District- Samastipur.

... .. Appellant/S

Versus

1. The State of Bihar.
2. Nilam Devi, Kamlu Ram, Resident of Village- Parsa Ram Balipur, Ward
No.-16, P.S.- Hathauri, District- Samastipur.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Rajeev Ranjan, Advocate
For the Respondent/s : Mr. Sadanand Paswan, Spl. PP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

4 23-06-2023 Heard learned counsel for the appellant, learned
Special P.P. for the State.

2. The appellant has preferred the present appeal under Section 14A(2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (for short 'the Act') against the order dated 14.12.2022 passed by the learned Special Judge, SC/ST (POA) Act, Samastipur in connection with Mahila P.S. Case No. 76 of 2022 registered under Sections 376(D), 341, 323, 504, 506/34 of the Indian Penal Code and U/s 3(1)(r)(s)(w) of the SC/ST 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, duly served upon, but informant failed to join the proceedings.

5. Appellant is named in the F.I.R. and is in custody since 07.10.2022.

6. The allegation against the appellant is to commit rape alongwith other co-accused persons upon the cousin daughter-in-law of informant, while she was alone in the house on intervening night of 07.10.2022.

7. Learned counsel for the appellant submitted that the appellant implicated falsely with present case out of land dispute with informant and victim, and on instance of informant, raised present allegation. It is also submitted that informant is not the eye witness of the occurrence and on the basis of hearsay input, the present FIR was lodged, which is also appearing non-convincing in available facts and circumstances as victim herself is a married and major lady. It is also submitted that as an afterthought in planned and formulated manner, victim named appellant in her statement recorded under Section 164 of Cr.P.C. It is also submitted that nothing surfaced during the course of medical examination, which may suggest that gang rape as alleged was committed upon daughter-in-law of informant which was even conducted on same very day i.e.



07.10.2022. It is further submitted that even the appellant was arrested on 07.10.2022 on the same very day of the occurrence but no medical examination under Section 53A was conducted upon to ascertain his implication with present allegation. While travelling the argument, it is pointed out that the co-accused person, namely, Bimlesh Kumar Chaurasiya @ Bimlesh Chaurasiya has already been granted bail by one of the learned co-ordinate Bench of this Court through Cr. Misc. No. 503 of 2023 dated 28.04.2023. It is submitted that nothing surfaced during the course of investigation against the appellant, which may suggest an atrocities within the meaning of 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 been submitted and, 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. while opposing the prayer of bail submitted that the specific allegation regarding rape as per



statement of victim recorded under Section 164 of Cr.P.C. is available against this appellant.

10. In view of the facts and circumstances, as mentioned above, as the basis of FIR is hearsay input of the victim, who is a married and major lady, coupled with the fact that charge-sheet has already been submitted, where appellant is in custody since 07.10.2022, accordingly, the appellant, above named, is directed to be released on bail in connection with Mahila P.S. Case No. 76 of 2022 on furnishing bail bond of Rs.10,000/- (Rupees Ten Thousand only) with two sureties of the like amount each to the satisfaction of learned Special Judge SC/ST (POA) Act, Samastipur/concerned Court, subject to the conditions as laid down u/s 437(3) of the Cr.P.C.

11. Accordingly, impugned order dated 14.12.2022 is set aside.

12. Hence, appeal stands allowed.

(Chandra Shekhar Jha, J)

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