

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.976 of 2023

Arising Out of PS. Case No.-544 Year-2022 Thana- CHANDAUTI District- Gaya

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1. Jitendra Yadav Son Of Kailash Yadav R/O Village- Sona Bigha, P.S.- Chandauti, District- Gaya
 2. Mithlesh Yadav @ Mithilesh Yadav Son Of Suresh Yadav R/O Village- Sona Bigha, P.S.- Chandauti, District- Gaya

... .. Appellant/s

Versus

1. The State of Bihar
2. Pushpa Kumari Wife Of Nikil Paswan R/O Village- Sona Bigha, P.S.- Chandauti, District- Gaya

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Manisha Prakash, Advocate
For the Respondent/s	:	Ms. Usha Kumari 1, Spl.P.P.
For the Informant	:	Mr. Ajay Kumar Sinha, Advocate

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

3 23-06-2023 Heard learned counsel for the appellants, learned counsel appearing on behalf of the informant and learned Special P.P. for the State on point of admission and on merit also.

2. The appellants have 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 24.01.2023 passed by the learned Court of Exclusive Special Judge, (SC/ST) Act, Gaya in connection with Chandauti P.S. Case No. 544 of 2022 registered under Sections 341, 323, 354-B and 504/34 of the Indian Penal Code and under



Sections 3 (i) (r) (s) (xi), 3(2) (v-a) 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, served upon and duly represented.

5. Appellants are named in F.I.R. and is in custody since 15.12.2022.

6. The allegation against the appellants is to made an attempt for rape alongwith other co-accused persons, where F.I.R. was registered for the offence under Section 354-B of the Indian Penal Code.

7. Learned counsel for the appellants submitted that both appellants are relative i.e., nephew and uncle, whereas other co-accused persons are also the family members and it is highly improbable to make an attempt for rape alongwith family members particularly in Indian Social context. It is submitted that a counter case of present occurrence was also lodged by appellant no. 1, namely, Jitendra Yadav, which has been registered as Chandauti P.S. Case No. 545 of 2022. It is submitted that occurrence is of free fight in nature where both parties received injuries and just to aggravate the allegation, the allegation as regard to attempt of rape was raised which even,



on investigation, found limited to outraging the modesty of informant/victim as same was not of such magnitude which can be said an attempt for rape. It is also submitted that the act of appellants is not of such nature, which may be said to be an atrocities within the meaning of the Act. While concluding the argument, it is submitted that appellant no. 1 is a man of clean antecedent, whereas appellant no. 2 found involved in one more criminal case, where he is on bail 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 appellants 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 duly assisted by learned counsel Mr. Ajay Kumar Sinha, appearing on behalf of the informant, while opposing the prayer of bail, fairly conceded the fact that charge-sheet has been submitted under Section 354-B of the Indian Penal Code.

10. In view of the facts and circumstances, as



mentioned above, as after investigation the case found not as an attempt for rape rather charge-sheet has been submitted under Section 354-B of the Indian Penal Code couple with the fact that both appellants are in custody since 15.12.2022, accordingly, both above named appellants are directed to be released on bail in connection with Chandauti P.S. Case No. 544 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 Exclusive Special Judge, SC/ST (POA) Act, Gaya/concerned Court, subject to the following conditions:

“(i) That the appellant shall not interact with the informant/victim and also shall not tamper with the evidence, influencing victim in any manner during the pendency of the trial, failing which, the State shall be at liberty to move before the learned Trial Court itself for the cancellation of bail bond of these appellants.

(ii) That the appellants shall cooperate in the trial and shall be physically present on each and every date before the learned Trial Court till the conclusion of trial and exemption from physical appearance be allowed by the learned Trial Court, only on



medical ground of these appellants duly supported by the documents.

(iii) That one of the bailors shall be deponent of the present bail petition.”

11. Accordingly, impugned order dated 24.01.2023 is set aside.

12. Hence, appeal stands allowed.

(Chandra Shekhar Jha, J)

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