

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.1725 of 2022

Arising Out of PS. Case No.-18 Year-2020 Thana- MAHILA PS District- Buxar

MD. IBRAHIM @ MD. IBRAHIM ANSARI S/o Md. Kamarudin Ansari R/o
Village- Sonbarisa, P.S.- Buxar (Ind.), District- Buxar.

... .. Appellant/s

Versus

1. The State of Bihar
2. Kushum Kali Baiga D/o Ram Chandra Baiga R/o Vill. Rehda, P.S.-
Chitrangi, Dist.- Singrauli, Madhya Pradesh.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Dr. Kamal Deo Sharma, Advocate
For the State	:	Mr. Sadanand Paswan, Spl. P.P.
For the Respondent no. 2:	:	None

CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL ORDER

5 22-03-2023 Heard learned counsel for the appellant and learned

Spl. P.P. for the State. No one appears on behalf of the

respondent no. 2.

The instant appeal has been preferred against the
order dated 12.4.2022 passed by learned Addl. District &
Sessions Judge 1st – cum – Special Court SC/ST (P.O.A.) Act,
Buxar, whereby the prayer for bail of the appellant in
connection with Buxar (Mahila) P.S. Case no. 18 of 2020
registered under section 376 and other sections of the Indian
Penal Code, sections 3(1)(r)(s) and 3(2)(va) of the SC and ST
(Prevention of Atrocities) Act and sections 4 and 5 of Immoral
Trafficking Act to which section 370 of the Indian Penal Code



was added subsequently, was rejected.

The allegation against the appellant is of having committed rape on the informant.

It is submitted by learned counsel appearing for the appellant that the earlier prayer for bail of the appellant was rejected vide order dated 21.12.2020 (Annexure-1) passed in Cr. Appeal (SJ) no. 1771 of 2020 and again by order dated 29.9.2021 passed in Cr. Appeal (SJ) no. 2446 of 2021. The appellant has remained in custody since 2.3.2020 and has no criminal antecedent. In spite of the appellant cooperating in the learned trial court, the non official witnesses are not cooperating in the trial and are not appearing in spite of all steps being taken by the learned court below. There being no chance of the trial concluding in the near future and the appellant having remained in custody for 2 years 11 months, it is prayed that the appellant be enlarged on bail.

The prayer for bail is opposed by learned Special P.P. appearing for the State.

The notice issued on respondent no. 2 was received by her mother and a supplementary affidavit has been filed on behalf of the appellants stating therein that both the respondent no. 2 and her mother reside together. Thus, there is valid service



of notice on respondent no. 2 and inspite thereof no one appears on behalf of the said respondent.

It may be further mentioned here that a report was called for with respect to the stage of the trial from the learned trial court. As per the report received contained in letter dated 13.3.2023 of the learned Addl. District & Sessions Judge 1st – cum – Spl, Judge (SC/ST Act), Buxar, charge was framed on 10.2.2021 and since then three prosecution witnesses ie the Investigating Officer, the doctor and a non official witness have been examined. However two other non official chargesheeted witnesses including the victim are not appearing for their examination inspite of the court having issued summon on 11.2.2021, bailable warrants on 9.3.2021 and non bailable warrants on 18.11.2021. It further transpires that several letters were also written by the Presiding Officer of the learned trial court to the District Magistrate, Superintendent of Police and the Secretary D.L.S.A., Buxar as well as Superintendent of Police, Singrauli (M.P.).

Heard learned Special P.P. appearing for the State.

Having heard learned counsel for the parties and taking into consideration the allegations against the appellant, the period in custody, the contents of the report of the learned



trial court specially about the non official witnesses including the victim not appearing inspite of steps haing been taken by the learned trial court as stated hereinabove, the Court is inclined to allow the instant appeal.

The appeal is allowed and the order impugned dated 12.4.2022 passed in SC/ST Case no. 28 of 2020 (arising out of Buxar (Mahila) P.S. Case no. 18 of 2020) by the Additional District & Sessions Judge 1st – cum – Special Judge (SC/ST), Buxar, is set aside.

The appellant is directed to be enlarged on bail in connection with Buxar (Mahila) P.S. Case no. 18 of 2020 on furnishing bail bond of Rs.10,000/ (Rupees Ten Thousand) with two sureties of the like amount each to the satisfaction of the learned A.D.J. 1st – cum – Spl. Court SC/ST (P.O.A.) Act, Buxar.

(Partha Sarthy, J)

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