

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.745 of 2024

Arising Out of PS. Case No.-42 Year-2023 Thana- MAHILA P.S. District- Kaimur (Bhabua)

Pawan Kumar Singh Kushwaha @ Pawan Kumar Son of Chhathu Singh
Kushwaha Resident of Village- Pihara, P.S.- Bhagwanpur, District- Kaimur
(bhabua)

... .. Appellant/s

Versus

1. The State of Bihar
2. Pinki Devi Daughter of Ramayan Ram, Wife of Prakash Kumawat Resident
of Village- Pihara, P.S.- Bhagwanpur, District- Kaimur (Bhabua)

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr.Kumar Sunil, Advocate
For the Respondent/s	:	Mr.Sadanand Paswan, Special P.P.
For the Respondent No. 2:	:	Mr. Pankaj, Advocate

**CORAM: HONOURABLE MR. JUSTICE RUDRA PRAKASH
MISHRA**

ORAL ORDER

3 05-04-2024 Heard learned counsel for the appellant, learned
Special Public Prosecutor for the State and learned counsel
for the informant/Respondent No.2. Perused the case diary.

2. The instant appeal has been filed by the
appellant against the order dated 04.01.2024 passed by
learned Special Judge, SC/ST (POA) Act, Kaimur at
Bhabua whereby the prayer for bail of the appellant in
connection with Mahila P.S. case No. 42 of 2023 under
Sections 376,34 of the Indian Penal Code and Sections 3(1)
(r)(s)(w), 3(2)(v) of SC/ST (POA) Act has been rejected.



3. Prosecution case, in short, is that on the pretext of marriage, the appellant called the complainant on mobile and also established physical relation and thereafter refused to solemnize marriage with her.

4. Learned counsel for the appellant submits that the appellant is innocent and has falsely been implicated in the present case. Charge-sheet has been submitted in this case under Section 376/34 of the Indian Penal Code. The statement of the victim recorded under Section 164 Cr.P.C. does not corroborate with the medical report. In her Section 164 statement, the victim has disclosed her age to be 18 years and the Medical Board assessed the age of the victim between 17-19 years. The appellant is in custody since 17.12.2023 and has no criminal antecedent. The appellant is alleged to have established physical relationship on the assurance of marriage. Subsequently, for one reason or the other, the marriage could not be solemnized and for the said reason, the present case has been instituted. Learned counsel for the appellant has further placed reliance on cases of the Hon'ble Supreme Court since reported in **2018 SCC Online SC-3100 (Dr. Dhruvaram Murlidhar Sonar**



versus The State of Maharashtra & Ors) and *(2019) 9 SCC 608 (Pramod Suryabhan Pawar vs. The State of Maharashtra and Ors.)*. Learned counsel for the appellant further submits that the appellant has not taken the caste name of the informant in public view. Hence, no offence under the provisions of SC/ST Act is made out against him. The appellant has no intention to disgrace the image of the informant in public view.

5. Learned Special P.P. for the State and learned counsel for Respondent No. 2 have vehemently opposed the prayer for grant of bail to the petitioner. Learned Special P.P. as well as learned counsel for the Respondent No. 2 have submitted that in her Section 164 Cr.P.C. statement has supported the allegation made in the F.I.R.

6. Considering the aforesaid facts and circumstances of the case, the period of custody undergone by the appellant as also the fact that the medical report does not corroborate with the allegation, this Court is inclined to allow this appeal. Accordingly, the appeal is allowed and order dated 04.01.2024 passed by learned Special Judge, SC/ST (POA) Act, Kaimur at Bhabua is hereby set aside.



7. Let the appellant be released on bail on furnishing bail bonds of Rs.10,000/- (Ten thousand) with two sureties of the like amount each to the satisfaction of Court below/concerned Court in connection with Mahila P.S. case No. 42 of 2023.

(Rudra Prakash Mishra, J)

Pankaj/Rajorshi

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