

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.32379 of 2024

Arising Out of PS. Case No.-38 Year-2019 Thana- SINDHIYA District- Samastipur

Raushan Kumar Singh @ Tonu Singh @ Roshan Singh, aged about 33 years,
M, S/o Late Raj Kumar Singh, R/o Milkee, P.S. - Singhia, Distt. - Samastipur.

... .. Petitioner

Versus

1. The State of Bihar.
2. Saroj Sahu, S/o Ramchander Sahu, R/o vill-Haradiya, P.S. - Singhia, Distt. - Samastipur.

... .. Opposite Parties

Appearance :

For the Petitioner	:	Mr. Saroj Kumar Choudhary, Advocate
For the O.P. No. 2	:	M/S. Binay Bhushan Prasad, Rani Shashi Bharti and Swati Kumari, Advocates
For the State	:	Mr. Vinod Shanker Modi, A.P.P.

**CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH
SINGH**

ORAL ORDER

3 05-12-2024 Heard learned counsel for the petitioner, learned
counsel for the opposite party no. 2 and learned A.P.P. for the
State.

2. The present application has been filed on behalf of
the petitioner for setting aside the order dated 17.02.2024,
passed by learned Additional Sessions Judge-VI-cum-Special
Court (POCSO) Act, Samastipur, by which the learned court
below has been pleased to reject the petition dated 12.12.2023
of defence which was filed to recall P.W. 7 (Amarjeet Kumar
Sah) for some query on some ground with regard to one viral
audio of P.W. 7, in a mechanical manner.



3. The prosecution case, in brief, is that on 05.04.2019 at about 9.00 A.M., the accused persons Rishikesh Kumar Singh @ Bittu Singh, Rajvardhan Singh @ Monu Singh and Raushan Kumar Singh @ Tonu Singh (petitioner) lifted the minor daughter of the opposite party no. 2 on the point of pistol from potato field and took her in a nearby *Banswari* and they committed gang rape and thereafter they tied her neck with *Dupatta* and killed her and thereafter put her on fire. It is further alleged that Rinku Devi and Urmila Devi had seen the occurrence.

4. It is submitted by learned counsel for the petitioner that the petitioner has falsely been implicated in the present case. It is further submitted that during the course of trial, Amarjeet Kumar (P.W. 7) was examined on 20.01.2023 and thereafter he was cross-examined and then he was released. The defence after 20.01.2023, learnt through an audio clip which was made viral in which Amarjeet Kumar Sah (P.W.7) was saying that he has adduced his evidence in presence of the opposite party no. 2, who is his brother-in-law and on the alleged date of occurrence, he was not present in the village. The said Amarjeet Kumar Sah (P.W.7) whatsoever deposed in his evidence was under pressure of the opposite party no. 2



Saroj Sah as he is the brother-in-law. It is further submitted that now the defence wanted to produce the said audio clip before the learned trial court and to be heard in the presence of P.W. 7 Amarjeet Kumar Sah to bring out the truth for better appreciation of the case. The petitioner had filed application under Section 311 of the Cr.P.C. on 12.12.2023 for recalling of Amarjeet Kumar (P.W. 7) before the learned court below but the same was rejected in a mechanical manner merely on the ground that earlier petition filed by the co-accused was rejected on 10.10.2023. It is further submitted that for the ends of justice, it is very much necessary to recall (P.W. 7) Amarjeet Kumar Sah for testing of audio clip in which he was saying that on the alleged date of occurrence, he was not present in the village. It is further submitted that earlier the co-accused has filed a petition under Section 311 of the Cr.P.C. on 18.09.2023 to recall (P.W. 7) Amarjeet Kumar Sah which was rejected on 10.10.2023. It is further submitted that total prosecution case is false and baseless and the Investigating Officer has not investigated the case in proper manner. The petitioner has enclosed conversation of an audio clip which was done through mobile between Amarjeet Kumar Sah (P.W.7) and Rajesh Kumar Singh which has been recorded by the petitioner and the



audio clip would be produced at the time of argument. It is further submitted that another video went viral in which the media persons are asking the questions in which reply has been made that neither he has seen the occurrence nor his mother has seen the occurrence and he has no any reason to suspect any one. The said video clip would also be produced at the time of argument.

5. Learned A.P.P. for the State and learned counsel for the opposite party no. 2 have vehemently opposed the prayer of the petitioner and submitted that the Amarjeet Kumar Sah (P.W. 7) was cross-examined at length by the defence.

6. Considering the aforesaid facts and circumstances of the case, this Court is not inclined to interfere with the order dated 17.02.2024, passed by the learned Additional Sessions Judge-VI-cum-Special Court (POCSO) Act, Samastipur and has rightly rejected the petition dated 12.12.2023 of the petitioner which was filed to recall Amarjeet Kumar Sah (P.W.7) for query on some ground.

7. Accordingly, the present quashing application stands rejected.

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(Chandra Prakash Singh, J)

