

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.5378 of 2023

Arising Out of PS. Case No.-259 Year-2023 Thana- MAGADH UNIVERSITY District- Gaya

Pushpanjay Kumar @ Kumar Pushpanjay Son Of Sanoj Yadav @ Sunil Kumar Dutt Resident Of Village - Seikhbara @ Shekhwara, P.S. - Magadh University, District – Gaya.

... .. Appellant/S

Versus

1. The State of Bihar.
2. Simran Kumari Daughter Of Babulal Manjhi Resident Of Village - Shekhwara, P.S. - Magadh University, District – Gaya.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Madhav Kumar, Advocate
For the Respondent/s	:	Mr. Binay Krishna, Spl. PP
For the Informant	:	Mr. Gaurav Kumar Verma, Advocate

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

4 11-06-2024 Heard learned counsel for the appellant and learned Special P.P. for the State as well as learned counsel for the respondent no.2/informant.

2. The appellant has preferred the present appeal under Section 14A(2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the "SC/ST Act") against the refusal of prayer for bail vide order dated 18.10.2023 passed by the learned Exclusive Special Court, SC/ST Act, Gaya, vide B.P. No. 438/23, in



connection with Magadh University P.S. Case No. 259 of 2023 registered under Section 376 of the Indian Penal Code and Sections 3(2)(v) of 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. The appellant is named in F.I.R. and is in custody since 02.08.2023.

6. The allegation against the appellant is to commit rape upon informant on 31.07.2023 at about 7:00 PM, while she went to attend the call of nature.

7. Learned counsel appearing for the appellant submitted that appellant implicated falsely with present case out of local disputes and differences. It is submitted that the victim/informant of this case is 25 years old, whereas the appellant is 21 years old and is a student of graduation. It is submitted by learned counsel that immediately after five hours of the occurrence, medical



examination was conducted upon the victim/informant but nothing adverse found as to suggest *prima facie* that rape was committed upon her. It is further submitted that during the course of investigation, the statement of victim/informant was recorded under Section 161 of Cr.P.C., where she failed to name appellant as to commit rape upon her. It is submitted that in view of such major contradictions in statement of victim as authored in FIR *qua* statement during investigation, is sufficient to suggest *prima facie* that the appellant/accused falsely implicated with present case. While concluding the argument, it is submitted that appellant is a man of clean antecedent, and, moreover, investigation has been completed, for which, charge-sheet has already been submitted in this case, as such, there is no chance of tampering with the evidence.

8. Learned counsel for the appellant submitted that if insult/occurrence is not caused to victim/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. Gaurav Kumar Verma for the Respondent No.2/Informant, while opposing the prayer of bail submitted that the allegation of rape is specific against this appellant/accused. It is further pointed out that rape is a legal finding not a medical one and, therefore, non-finding of injuries does not lead to conclusion *ipso-facto* that rape was not committed upon the victim.

10. In view of the submissions, as made above and by taking note of re-statement of victim, where she failed to name appellant/accused coupled with the fact that the charge-sheet has been already submitted, where appellant is in custody since 02.08.2023, let the appellant, above named, is directed to be released on bail in connection with Magadh University P.S. Case No.



259 of 2023 on furnishing bail bond of Rs.10,000/- (Rupees Ten Thousand) with two sureties of the like amount each to the satisfaction of learned Special Judge SC/ST(POA) Act, Gaya, subject to the following conditions:

(i) That appellant shall not interact with informant/victim during the trial in any manner or to influence any witness, failing which, the State shall be at liberty to move before the Trial Court itself for the cancellation of bail bond of the appellant.

(ii) Accused/appellant shall cooperate in the trial and shall be physically present on each and every date after framing of charge before the Trial Court till conclusion of the trial and exemption from physical appearance be allowed by the Trial Court, only on



medical ground of the appellant duly supported by the documents.

11. Accordingly, impugned order dated 18.10.2023 is set aside.

12. Hence, appeal stands allowed.

(Chandra Shekhar Jha, J)

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