

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.5546 of 2023**

Arising Out of PS. Case No.-1090 Year-2023 Thana- SHERGHATI District- Gaya

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Santosh Yadav @ Nachhur Yadav @ Santosh Kumar Yadav, Aged about 25 years (Male), son of Late Kamdev Yadav, Resident of village- Jamuniya, P.S.- Sherghati, District- Gaya

... .. Appellant/s

Versus

1. The State of Bihar
2. Radha Devi, wife of Yogesh Mandal, Resident of village- Jamuniya, P.S.- Bahera (OP) , District- Gaya

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Vishwa Ranjan Choudhary, Advocate
For the Respondent/s : Mr.Binay Krishna, Spl. P.P.

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**CORAM: HONOURABLE MR. JUSTICE RAMESH CHAND
MALVIYA**

ORAL ORDER

4 18-04-2024 Despite the notice has been served, no one appears on behalf of the opposite party no.2 to assist this Court.

2. Heard learned counsel for the appellant and learned Special Public Prosecutor for the State.

3. The instant appeal has been filed by the appellant against the order dated 09.11.2023 passed by learned Court of the Exclusive Special Judge, S.C./S.T., Gaya whereby the prayer for bail of the appellant in connection with Sherghati (Bahera O.P.) P.S. Case no. 1090 of 2023 under Sections 452, 341, 323, 354(B), 504 and 506 of the Indian Penal Code and Sections 3(i) (r)(s)/3(v) of SC/ST Act was rejected.

4. As per prosecution case, on the alleged date of



occurrence in the night the appellant had entered into the house of informant, gagged her mouth and attempted to commit rape. On raising alarm, the nearby people came and caught hold the appellant but any how he managed to escape abusing threatening for dire consequences to the informant.

5. It is submitted by learned counsel for the appellant that appellant is innocent and has committed no offence. He has been falsely implicated in this case. The F.I.R. has been lodged after the delay of four days from the date of occurrence and there is no explanation of delay. He has not taken the caste name of the informant in public view. Hence, no offence is made out under the provisions of the SC/ST Act against him. The appellant has got no criminal antecedent and he is languishing in judicial custody since 28.10.2023.

6. The appeal for bail is opposed by learned Spl. P.P. for the State.

7. From perusal of the F.I.R. and impugned order dated 09.11.2023, it appears that on the basis of written report of informant F.I.R. registered against the appellant. There is no any allegation of sexual assault against the appellant. The date of occurrence is 12.10.2023 but F.I.R. has been lodged after the delay of four days and no explanation has been given in the



F.I.R. for the said delay.

8. Considering the facts and circumstances of the case and period of custody of the appellant, this Court is inclined to allow this appeal. Accordingly, the appeal is allowed and the impugned order dated 09.11.2023 is hereby set aside.

9. 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 the learned Court of Exclusive Special Judge, S.C./S.T., Gaya in connection with Sherghati (Bahera O.P.) P.S. Case No. 1090 of 2023.

(Ramesh Chand Malviya, J)

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