

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.2484 of 2024

Arising Out of PS. Case No.-285 Year-2023 Thana- BHAGWANPUR District- Kaimur
(Bhabua)

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Sunil Mushar @ Sunil Kumar S/O Nanhak Mushar R/O Village- Makari
Khoh, P.S.- Bhagwanpur, Dist- Kaimur At Bhabua

... .. Appellant/s

Versus

1. The State of Bihar
2. Sri Niwas Mushar S/O Late Shukhu Mushar R/O Village- Makari Khoh,
P.S.- Bhagwanpur, Dist- Kaimur At Bhabua

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Uday Pratap Singh, Adv.

For the Respondent/s : Mr. Bal Mukund Prasad Sinha, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

6 14-02-2025 The instant Criminal Appeal is taken up for hearing.

2. This is an application under Section 101(5) of the Juvenile Justice (Care and Protection of Children) Act, 2015, challenging an order of rejection of bail, passed by the learned Additional Sessions Judge- I-Cum-Special Judge, Childrens Court, Kaimur at Bhabhua in A.C. Trial No. 06 of 2024, arising out of Bhagwanpur P.S. Case No. 285 of 2023.

3. On the basis of a written complaint, Police registered Bhagwanpur P.S. Case No. 285 of 2023, dated 22nd September, 2023, under Section 377 of the I.P.C. and Section 3/4 of the POCSO Act, 2012.

4. It is pertinent to say that the victim is a minor boy



aged about six years. He was sexually assaulted by the son of the brother of the informant in the night of 21/22 September, 2023. The extent and gravity of offence was such that the victim boy started bleeding from his anus.

5. It is no longer res intergra that Section 377 of the I.P.C. has been declared unconstitutional and it is no more an offence under the I.P.C. However, the specific allegation against the appellant attracts the offence punishable under Sections 4 and 6 of the POCSO Act, in view of the provision contained in Section 5 (n) of the said Act.

6. It is contended on behalf of the appellant that the Social Investigation Report of the appellant shows that he was a minor on the alleged date of offence. No allegation of previous offence was made out against the appellant. Probation Officer reported that he is a boy of calm nature and reactive to the incidents happening around him. He stays in the Observation Home and if he is released on bail under the custody of his parents, who are day labourers, there would be no chance for the appellant to mix with the known criminals.

7. Learned Advocate on behalf of the State/ respondents has raised objection for prayer of bail.

8. Having heard the learned counsels for the parties,



this Court finds that the appellant committed the offence when he was aged about 17 years and 06 months i.e. on the verge of his majority while committing such offence. He even failed to consider that by his act, his cousin brother aged about 6 years, would be the victim of a heinous offence. The offence was perpetrated in such a manner that the victim was bleeding and he had to undergo medical treatment.

9. Considering such aspect of the matter, I do not find any infirmity in the impugned order passed by the court of appeal in A.C. Trial No. 06 of 2024. The instant Criminal Appeal is accordingly dismissed on contest.

(Bibek Chaudhuri, J)

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