

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.659 of 2024**

Arising Out of PS. Case No.-280 Year-2021 Thana- BARH District- Patna

Ricky Kumar @ Rikki Kumar S/o Late Jai Nath Sharma R/m-Dhelwan Gosai,
P.S.-Barh, Distt-Patna Appellant

Versus

1. The State of Bihar

2. [REDACTED] R/o Panchsil Nagar, Ward No.4,P.S.-Barh,
Distt-Patna
... .. Respondents

Appearance :

For the Appellant

:

Mr. Vijay Kumar Sinha, Advocate
Mr. Arvind Sriwastav, Advocate
Mr. Satendra Bhatnagar, Advocate
Mr. Krishna Murari Prasad, Advocate
Mr. Kumar Shivam Sinha, Advocate
Mr. Santosh Kumar, Advocate
Mr. Ajay Mishra, APP

For the State

:

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY
ORAL ORDER**

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

4 20-11-2024 Heard learned counsel for the appellant and learned
Additional Public Prosecutor for the State.

2. *Vide* order dated 19.09.2024, notice was issued upon the respondent no.2 and State was given an opportunity to file show-cause but neither any show-cause has been filed on behalf of the State nor any prayer for adjournment has been made as also no one appeared on behalf of respondent no.2.

3. Records have been placed before this Court to consider the prayer of the appellant for suspension of his sentence and release on bail during pendency of the appeal.



4. The appellant has been convicted vide judgment dated 27.04.2024 and sentenced vide order dated 30.04.2024 passed by learned Additional Sessions Judge-VI-cum-Special Judge (POCSO Act), Patna in Special (POCSO) Case No. 129 of 2021 arising out of Barh P.S. Case No. 280 of 2021 for the offence under Section 376AB of the Indian Penal Code and Section 6 of the Protection of Children from Sexual Offences (in short 'POCSO') Act. He has been ordered to undergo rigorous imprisonment for 20 years with a fine of Rs.25,000/- for the offence under Section 6 of the POCSO Act and in default of payment of fine, he shall further undergo simple imprisonment for eight months.

5. As per the prosecution story, on 13.07.2021 at about 05 AM, when the informant woke up, she found that her daughter went missing from her bed and the main door of the house is closed from the outside. Upon that the informant woke up his son who used to sleep in the kitchen and started shouting to open the gate from the outside. After coming out of the house, she saw that mud beside the boundary wall of the house has fallen on the ground. The informant along with her son, searched for her daughter to all possible places but could not trace her.



6. Learned counsel for the appellant submits that in this case, the appellant has been convicted under the provisions of the POCSO Act by determining the age of the victim girl as below 18 years on the basis of a Transfer Certificate of Saint Joseph Primary School, Barh, Patna which has been marked Exhibit 'P/11'. Referring to Paragraph '33' of the deposition of the mother of the victim girl, learned counsel points out that the victim girl was first admitted in a private school in Nursery or LKG, whereafter she was taken to Saint Joseph Primary School. In course of her deposition, the mother (PW-2) has stated that the victim has taken birth in PMCH, Patna, but she had not received any birth certificate from the hospital. This statement of the mother of the victim, according to learned counsel for the appellant is mainly an attempt to suppress the current age of the victim.

7. Learned counsel further points out that in Paragraph '34', PW-2 has stated that she was living at Patna at the time of birth of her daughter but she has not got the registration of birth of her daughter in Patna Municipal Corporation. Further, it is submitted that PW-2 has stated that at the time of admission in Church School she had not submitted any certificate of date of birth of her daughter. She had not submitted any affidavit and



she has stated that she got admission on the basis of the Aadhar Card of the daughter. It is thus submitted that in absence of the first school admission register showing date of birth of the victim girl, the learned trial court has completely erred in determining the age of the victim on the basis of school transfer certificate of the second school of the victim girl.

8. Learned counsel further submits that the background of the family of the victim may also be found from the deposition of the prosecution witnesses including the victim. She has clearly stated in her deposition that her father is not living with them and right from beginning she had not seen her biological father and she was not aware where he was residing. She was suggested that her mother had married to one, Sunil Kumar Ambedkar, the victim girl has simply stated that she is not aware of it.

9. It is pointed out that the victim girl has stated in her deposition that sometimes she was being beaten and scolded by her mother and brother for not doing the household work and few days prior to the date on which she left her house, her brother had beaten her. It is submitted that from her earlier deposition it would appear that because of the ill-treatment which she was getting from her mother and brother, she had left



her house on her own and went to Bakhtiyarpur on 13.06.2021. In this regard, Paragraphs '30' and '31' of the deposition of the victim (PW-1) have been pointed out. She went to Hyderabad where she stayed for two days and then she returned and straightway went to the Police Station on 18.07.2021. Learned counsel submits that her medical examination was done on 20.07.2021 in which the Doctor has recorded her general condition showing that there is no injury on her whole body or her private part. P/V examination shows that Admit 01 finger tightly and the opinion of the Doctor is that there is no sign of recent sexual intercourse. The age of the victim has been assessed below 18 years in the Radiology report. It is, thus, submitted that the victim girl in this case cannot be said to be a sterling witness and there being no other clinching evidence on record, the conviction of the appellant in this case is likely to be held bad. In ultimate analysis, the submission is that the appellant has already remained in incarceration for more than three years, this appeal is of the year 2024 and it is not likely to be heard in near future, therefore, he would deserve suspension of sentence and release on bail.

10. Learned Additional Public Prosecutor for the State has opposed the prayer of the appellant. It is submitted that the



victim girl has been found minor in the Radiological report, therefore, the learned trial court has rightly held that she is below 18 years of age.

11. Learned counsel further submits that even though the victim girl has stated that she was being beaten by her mother and brother and two days prior to the date on which she left her house upon being beaten by her brother, the allegation that she was subjected to rape by the appellant has been proved by the prosecution.

12. Having regard to the submissions noted hereinabove and the materials which we have gone into prima facie for the purpose of considering the prayer of the appellant, we are of the view that in this case, the learned trial court has determined the age of the victim on the basis of school living certificate of the second school of the victim girl which is not in terms of the scheme of the Juvenile Justice Act, moreover, the victim girl has herself stated about the circumstances under which she was being beaten by her mother and brother and she has also stated that she had left her house on her own and had gone to Bakhtiyarpur from where she had gone to Hyderabad, the allegation of commission of rape is being made after more than a month of leaving of her house, she had never made this



complaint to anyone, to any authority either at Hyderabad or at any other place and the Medical report of the Doctor (PW-5) is not corroborating the allegation of sexual intercourse, in these circumstances, this Court directs suspension of sentence and release of the appellant on bail during pendency of the appeal on furnishing bail bond of Rs. 25,000/- (Rupees Twenty Five Thousand) with two sureties of the like amount each to the satisfaction of learned Additional Sessions Judge-VI-cum-Special Judge POCSO Act, Patna in connection with Special (POCSO) Case No. 129 of 2021 arising out of Barh P.S. Case No. 280 of 2021.

13. Fine, if any, imposed as part of sentence shall remain suspended during pendency of the appeal.

14. List this appeal for hearing on it's turn.

15. It is clarified that the observations made hereinabove are only prima-facie and tentative in nature for purpose of consideration of bail of the appellant and would not cause prejudice to either of the parties.

(Rajeev Ranjan Prasad, J)

(Ashok Kumar Pandey, J)

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