

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1289 of 2025**

Arising Out of PS. Case No.-166 Year-2024 Thana- SAHPUR District- Bhojpur

Kanhaiya Yadav S/o Ram Nisha Yadav R/o Village - Dewaich Kundi, P.S -
Shahpur, District - Bhojpur

... .. Appellant/s

Versus

1. The State of Bihar
2. Anita Devi W/o Samat Yadav R/o Village - Dewaich Kundi, P.O - Bimari,
P.S - Shahpur, District - Bhojpur

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Bibhakar Tiwary, Advocate
: Mr. Dilip Kumar Tiwary, Advocate
For the State : Mr. Ajay Mishra, APP

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE JUSTICE SMT. SONI SHRIVASTAVA
ORAL ORDER**

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

10 20-04-2026 Heard learned counsel for the appellant and learned
Additional Public Prosecutor for the State.

2. Despite valid service of notice on respondent no.2,
she has chosen not to enter appearance in this case.

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 the pendency of the appeal.

4. The sole appellant has been convicted *vide*
judgment dated 11.08.2025 and sentenced *vide* order dated
13.08.2025 by the learned Exclusive Special Court of POCSO



Act-cum-District and Additional Sessions Judge-VI, Bhojpur at Ara, in connection with POCSO Case No.51 of 2024, arising out of Shahpur P.S. Case No.166 of 2024 for the offence under Section 376 of the Indian Penal Code (in short the 'IPC') and Section 6 of Protection of Children from Sexual Offences Act (hereinafter referred to as 'POCSO Act'). He has been ordered to undergo rigorous imprisonment for 20 years with a fine of Rs. 25,000/- and in default of payment of fine, he has further been ordered to undergo rigorous imprisonment for further six months for offences under Section 6 of the POCSO Act

5. The prosecution case is based on the written information furnished by the mother of the victim, who has been examined as PW-1 in the trial. As per the written information, when the informant was sleeping on the roof of her house on 29.04.2024 and her six year old daughter (X) was sleeping alone on the ground floor in a room, all of a sudden the informant heard sound/cry of the victim whereafter she went downstairs and found that her daughter was weeping. The daughter of the informant disclosed the name of this appellant. She alleged that the appellant had come inside the room and done dirty act with her. The informant claimed that when she went in search of the appellant then she found that he was fleeing away. The appellant



had allegedly threatened the victim that if she would disclose the occurrence to her mother then she would be killed. The informant claimed that blood was coming out from the private parts of the victim.

6. Learned counsel for the appellant submits that in this case the victim has deposed as PW-2. It is pointed out that the learned Trial Court has recorded, as a matter of fact, that the victim was unable to answer the questions put to her. She could not say as to why she had come to the Court, she could not disclose her date of birth. It is, thus, submitted that the victim girl being a child witness, her testimony is required to be duly corroborated from the reliable and cogent materials otherwise it would not be safe to act upon the sole testimony of the child witness that too in a condition where the witness is not showing her competence to understand the matter and the consequences of not speaking the truth.

7. Learned counsel further submits that in this case, the appellant was arrested on the very next date of occurrence but the Investigation Officer did not take him for medical examination.

8. It is submitted that the appellant and the informant both are co-sharers and this would appear from the testimony of



PW-1, who has admitted in her deposition in paragraph no.13 that she had lodged 144 Cr.P.C. proceeding vide Case No. 24/2023 but she had abandoned that case. She has also stated that she had filed a partition case. It is submitted that because of this land dispute, the appellant has been falsely implicated in this case.

9. Learned counsel further submits that the victim was examined by a Doctor, namely Shazia Badar (PW-5) who was posted as Medical Officer in Sadar Hospital, Ara. She has categorically stated that there was no evidence of injury either bruised or abrasion on the whole body including private parts. The Doctor noted that the probable age of the victim is 8-10 years and she came to the conclusion that there is no evidence of sexual assault at present on the victim. It is submitted that the deposition of the Doctor (PW-5) would go a long way to show that allegation of sexual assault was concocted as it has been repeatedly stated that on the body of the victim, there was no sign of sexual assault either externally or internally.

10. Learned counsel further submits that the Investigating Officer has stated that she had collected the cloth of the victim and the same was sent to the Forensic Science Laboratory on which blood was found. However, on perusal of



the records, it would appear that the cloth was presented to the I.O. by the mother of the victim on the next day of occurrence in the evening time at the police station but the said cloth was not produced in the Trial Court on 01.05.2024. The I.O. filed an application only on 19.06.2024 i.e. after more than one and half months in the Court to allow him to send the cloth to FSL. During this period of one and half months where was the cloth lying is not known.

11. It is lastly submitted that the appellant is in incarceration since 01.05.2024 and this being a case of his false implication on account of land dispute, he would deserve suspension of sentence and release on bail.

12. On the other hand, Mr. Ajay Mishra, learned Additional Public Prosecutor for the State has opposed the prayer for suspension of sentence of the appellant. It is submitted that the victim appears to be a minor girl aged about six years, however, the land dispute between the parties is an admitted position and the Doctor (PW-5) has not found any sign of sexual assault.

13. Having regard to the entire facts and circumstances, the submissions noted hereinabove and the materials which we have *prima facie* gone through at this stage



for purpose of suspension of sentence and release of the appellant on bail, we have noticed that the victim in this case is six years old, she could not answer some basic questions put to her by the learned Trial Court, the land dispute between the parties is an admitted position, the Doctor (PW-5) has opined that she had not found any sign of sexual assault either on the external or internal part of the body of the victim and the I.O. seems to have sent the cloth to the FSL after one and half months without explaining as to where were the cloth kept when it was not presented in the Court for all this period, we are of the considered opinion that the appellant has made out a case for suspension of sentence and release on bail.

14. Accordingly, we direct suspension of sentence and release of the appellants above-named on bail during pendency of the appeal on furnishing bail bonds of Rs.25,000/- (Rupees Twenty Five Thousand) each with two sureties of the like amount each to the satisfaction of learned Exclusive Special Court of POCSO Act-cum-District and Additional Sessions Judge-VI, Bhojpur at Ara, in connection with POCSO Case No.51 of 2024, arising out of Shahpur P.S. Case No.166 of 2024.

15. Fine, if any, imposed as part of sentence shall



remain suspended during pendency of the appeal.

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

17. List this appeal for hearing on its turn.

(Rajeev Ranjan Prasad, J)

(Soni Shrivastava, J)

harsh/anand/-

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