

Chandan Yadav vs The State Of Bihar on 21 October, 2024

Author: Chandra Shekhar Jha

Bench: Chandra Shekhar Jha

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL APPEAL (SJ) No.2642 of 2024

Arising Out of PS. Case No.-130 Year-2023 Thana- SIKANDRA District

Chandan Yadav, S/o Dinesh Yadav, R/V-Dharsanda, P.S.-Sikandra, Distt-Jamui

... .. Appellant

Versus

1. The State of Bihar
2. Ms. X, D/o Shambhu Tanti, R/o vill - Pohe, P.O. and P.S. - Sikandra, Distt-Jamui

... .. Resp

Appearance :

For the Appellant/s : Mr. Rajesh Kumar Sinha, Advocate

For the Respondent/s : Mr. Sadanand Paswan, Spl. P.P.

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA

ORAL ORDER

5 21-10-2024

At the outset, it is pointed out by learned counsel that he made wrong submission on 09.09.2024 that Trial Court Records of this case is available along with Cr. Appeal (SJ) No.2665 of 2024.

2. Considering the present submission, the submission as raised on 09.09.2024, which is the part of aforesaid order be expunged.

3. The matter was taken up on Board for considering the prayer of bail and suspension of sentence preferred by the appellant/accused under Section 389(1) of the Code of Criminal Procedure (for short 'CrPC')/Section 430 of BNSS as raised through memo of appeal under Patna High Court CR. APP (SJ) No.2642 of 2024(5) dt.21-10-2024 Section 374(2) of the CrPC/Section 415 of BNSS itself against the judgment of conviction dated 16.05.2024 and order of sentence dated 17.05.2024 respectively passed by learned Additional Sessions Judge-I, Jamui in POCSO Case No.24 of 2023 arising out of Sikandra P.S. Case No.130 of 2023, whereby the appellant has been convicted under Sections 341, 323, 354-A read with 34 of the Indian Penal Code (for short 'IPC'), Section 8 read with Section 17 of the Protection of Children from Sexual Offences Act (for short 'POCSO Act') and sentenced to undergo simple imprisonment for one month under Section 341 read with 34 of the IPC, simple imprisonment for three months for the offence under Section 323 read with 34 of IPC and simple imprisonment for three years under Section 8 read with Section 17 of the POCSO Act.

However, all the sentences have been ordered to run concurrently.

4. It is submitted by learned counsel appearing for the appellant that the conviction in present case was secured on the basis of sole testimony of victim, who was examined before learned Trial Court as PW-1. It is submitted Patna High Court CR. APP (SJ) No.2642 of 2024(5) dt.21-10-2024 that statement of victim is not consistent qua occurrence, which can be gathered from her statement recorded under Section 164 of the Code of Criminal Procedure (for short 'CrPC'). It is pointed out that the victim deposed in improved manner over her statement as recorded under Section 164 of the CrPC and for that reason, she cannot be accepted as sterling witness. It is also submitted by learned counsel that co-convict, namely, Pukari Yadav, against whom direct allegation of sexual assault was available has already granted bail after suspending his sentence through Cr. Appeal (SJ) No.2665 of 2024 dated 19.09.2024, whereas as per testimony of PW-1, the allegation against appellant/convict is available only to assist the co-convict, Pukari Yadav, as he closed the door from outside.

5. It is also submitted that appeal is of year 2024 itself, where appellant/convict remains in custody for one year and five months against sentence of three years and as this appeal is not likely to be taken up on Board for final hearing in near future, on this ground alone, the appellant/accused deserves bail. In support of his Patna High Court CR. APP (SJ) No.2642 of 2024(5) dt.21-10-2024 submission, learned counsel has placed reliance on a legal report of Hon'ble Supreme Court as available through Atul alias Ashutosh vs. State of Madhya Pradesh [(2024) 3 SCC 663].

6. Learned Spl.P.P. while opposing the prayer of bail and suspension of sentence of the appellant submitted that victim/PW-1 categorically stated against this appellant/convict in trial as to assist co-convict Pukari Yadav.

7. In view of aforesaid factual and legal submissions and by taking note of deposition of victim/PW-1 in totality, coupled with the fact that appellant/accused remains in custody for one year and five months against sentence of three years, where appeal is not likely to be taken up for final hearing in near future, accordingly, the appellant/accused, above-named, is directed to be released on bail on furnishing bail bond of Rs.10,000/- (Rupees Ten Thousand) with two sureties of the like amount each to the satisfaction of the learned Additional Sessions Judge-I, Jamui/concerned court in POCSO Case No.24 of 2023 arising out of Sikandra P.S. Case No.130 of 2023, during Patna High Court CR. APP (SJ) No.2642 of 2024(5) dt.21-10-2024 the pendency of appeal.

8. The sentence of imprisonment awarded by the learned trial court against the appellant/accused shall remain suspended till disposal of the appeal.

9. The appellant/convict is directed to co-operate in final hearing of appeal.

10. Observations, as regard to merit of the case, if any, shall be of no bearing while final hearing of the appeal.

11. List this matter under the heading "For Hearing" in its own seriatum.

(Chandra Shekhar Jha, J.) Sanjeet/-

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