

IN THE HIGH COURT OF JHARKHAND AT RANCHI
B.A. No. 13914 of 2022

Arya Raj @ Butan @ Phuldev Kumar Ganjhu Petitioner
Versus
The State of Jharkhand Opp. Party

CORAM : HON'BLE MR. JUSTICE SUBHASH CHAND

For the Petitioner : Mr. Avishek Prasad, Advocate
For the State : Mr. Subodh Kumar Dubey, A.P.P.

Order No.05 /Dated: 1st September, 2023

1. Heard learned counsel for the applicant and learned A.P.P. for the State.
2. This second bail application has been filed on behalf of the abovenamed applicant with prayer to release on bail in connection with Budhmu P.S. Case No.13 of 2022 being POCSO Case No.44 of 2022 registered under Sections 376, 376(D)/34 of the Indian Penal Code and under Section 4/6 of the POCSO Act, pending in the court of learned AJC-IV-cum-Spl. Judge POCSO, Ranchi.
3. Learned counsel for the applicant has submitted that earlier the prayer for bail of the applicant has been rejected by this Court vide order dated 11.07.2022 passed in B.A. No.6881 of 2022. By way of present bail application, the applicant has renewed his prayer for bail primarily for the reasons that after rejection of first bail application, three witnesses have been examined before the learned trial Court and no one has supported the prosecution story. It is also further submitted that similarly situated co-accused, namely, Sundar Kumar @ Sundar Thakur has been granted bail by this Court vide order dated 28.11.2022 in B.A. No.8117 of 2022 and contended to give the privilege of bail.
4. Learned APP opposed the contentions made by the learned counsel for the applicant.
5. The first bail application of the applicant was rejected on merit.
6. From perusal of the rejection of the first bail application, it is evident that the first bail application of the applicant was rejected on the ground that the victim was minor as per the medical examination report though she was having affairs with Sundar Kumar @ Sundar Thakur, yet Sundar Thakur and his friend Arya Raj @ Butan both had committed gang rape. This allegation made in the FIR was well corroborated with the statement of victim under

Section 164 of the Code of Criminal Procedure. The Investigating Officer also collected blood sample of accused persons and DNA test of the said dead child. Report of the same was also awaited. Keeping in view the minor age of victim, her consent has no bearing.

7. After rejection of this bail application, the bail application of co-accused, namely, Sundar Thakur was disposed of by this Court vide order dated 28.11.2022 in B.A. No.8117 of 2022. At the time of disposal of bail application of Sundar Thakur, the trial has commenced and the victim was also examined, wherein the victim deviated from her statement under Section 164 of the Code of Criminal Procedure and did not support the prosecution story, so the bail application of Sundar Thakur was allowed. As such, the petitioner cannot be given the parity of the bail application granted to the co-accused Sundar Thakur, which was disposed of after commencement the trial and examination of the victim.

8. The contentions of the learned counsel for the petitioner that after rejection of the first bail application, three witnesses were examined and all have not supported the prosecution story. If after rejection of the first bail application any witness has been examined before the learned trial Court, their testimony cannot be evaluated at the time of disposal of second bail application.

11. In view of the above, no new ground for consideration of the second bail application is made out. Accordingly, the same is hereby rejected.

(Subhash Chand, J.)

Madhav/-