

Arising Out of PS. Case No.-1383 Year-2019 Thana- NAWADA District- Nawada

... .. Appellant

Versus

... .. Respondent

For the Appellant : Mr. P.K.Sahi, Senior Advocate
Mr. Mukesh Kumar, Advocate
For the Respondent : Mr. Sadanand Paswan, Spl. P.P.

ORAL ORDER

2. This appeal has been preferred under Section 14A(2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 for setting aside an order dated 21.01.2020 passed in Special Case No. 58 of 2019, arising out of Nawada Town P.S. Case No. 1383 of 2019, registered for the offences punishable under Section 376 of the Indian Penal Code, Section 4 of POCSO Act and Section 3(i)(xi), 3(2)v of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 passed by the learned Special Judge (SC/ST Act)-cum-Additional District & Sessions Judge 1st, Nawada, whereby the prayer of the appellant for grant of regular



WWW.LIVELAW.IN

bail has been rejected.

3. The informant has alleged in his written report, which is the basis for registration of the First Information Report that when the informant's six-year old daughter was on her way back home from school, the appellant, under some allurements, took her to his house and touched the private parts of her body. When she started weeping, she was allowed by the appellant to go back to her home. The victim child is said to have explained to the informant the entire story. Allegedly, the informant, thereafter, went to the appellant's place with the victim where he found the appellant totally under the influence of alcohol and was not even in a position to talk. The informant, with the help of local people, caught hold of the appellant and handed him over to the police. The alleged occurrence is of 28.11.2019. Since then, the appellant is in custody.

4. In the present memo of appeal, a plea has been taken on behalf of the appellant that the appellant is not mentally stable and he is undergoing treatment for last 15 years under the supervision of a Psychiatrist of repute in the State of Bihar.

5. Mr. P.K. Sahi, learned Senior Counsel appearing on behalf of the appellant, has argued that the fact regarding the



WWW.LIVELAW.IN

appellant's mental condition was intimated by none else than by the appellant's wife to the Superintendent of Police immediately after lodging of the First Information Report. He has referred to the contents of the First Information Report to submit that even as per the case of the prosecution, the appellant was not found mentally stable when the informant had gone to accost him about his conduct. He has also referred to certain averments made in the memo of appeal and materials collected during the course of investigation to contend that the appellant has been trapped by the informant and his family members for wrongful gain.

6. This is to be noted that in the light of the plea taken on behalf of the appellant that he was not mentally stable, the Court had directed for a medical examination of the appellant by experts in the Psychiatry Department of the Patna Medical College and Hospital, Patna (PMCH). The appellant was produced by the jail authorities, where he was examined by two Psychiatrists. A report, based on examination by the Psychiatrists, has been made available to the Court by the Superintendent, Divisional Jail, Nawada. The appellant has been found by the experts to be suffering from 'schizophrenia'. The said report is there on record and appears to be supporting the



WWW.LIVELAW.IN
plea taken on behalf of the appellant that his mental condition is unstable, at least, for the purpose of consideration of his case for his release on bail. Medical prescriptions of the consultant Psychiatrists have also been brought on record by way of annexure to a supplementary affidavit filed on behalf of the appellant.

7. On receipt of report of the Psychiatrists of the PMCH through the Superintendent, Divisional Jail, Nawada, this Court had wished to know from Mr. P.K. Sahi, learned Senior Counsel, as to how can it be ensured that the victim may not have any occasion to come face-to-face with the appellant since it had appeared from the First Information Report that the victim's parents and the appellant resided in the same colony. The Court, in the background of the plea of mental instability of the appellant, had asked Mr. P.K. Sahi, learned Senior Counsel to tell this Court as to how appearance of the appellant before the Court below shall be ensured, if the appellant is directed to be released on regular bail during the pendency of the criminal case. Mr. Sahi, learned Senior Counsel, on instructions has submitted that three close relatives of the appellant, viz., (i) the appellant's wife, Ms. Gunjan Kumari (ii) his father-in-law, Sri Mithilesh Prasad and (iii) his co-brother, Sri Arvind Kumar have



WWW.LIVELAW.IN

undertaken to ensure that the appellant appears before the Court below as and when required, considering his mental condition. He has also submitted that the informant, who was residing in a nearby tenanted accommodation has shifted to another accommodation which is at least two kms. away from the appellant's residence and in the normal circumstances, there is no chance of the victim having any occasion to see the appellant.

8. In view of the submissions advanced on behalf of the appellant and the facts and circumstances noted above, this appeal is allowed.

9. The impugned order dated 21.01.2020 passed in Special Case No. 58 of 2019, arising out of Nawada Town P.S. Case No. 1383 of 2019, registered for the offences punishable under Section 376 of the Indian Penal Code, Section 4 of POCSO Act and Section 3(i)(xi), 3(2)v of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 passed by the learned Special Judge (SC/ST Act)-cum-Additional District & Sessions Judge 1st, Nawada, is set aside.

10. Let the appellant, above named, be released on bail on furnishing bail bond of Rs. 10,000/- (Ten Thousand) with two sureties of the like amount each to the satisfaction of



WWW.LIVELAW.IN

the learned Special Judge (SC/ST Act)-cum-Additional District & Sessions Judge 1st, Nawada, in Special Case No. 58 of 2019, arising out of Nawada Town P.S. Case No. 1383 of 2019.

11. It is made clear that any observation made in the present order in respect of the appellant's mental condition is purely tentative in nature only for the purpose of the present appeal, which relates to grant of regular bail. Such observations should not be treated as an opinion of this Court or a finding recorded by this Court for any other purpose.

12. Before I part with the present order, I consider it apt to notice a significant aspect of the matter relating to disclosure of identity of a victim of sexual offence; particularly when the victim is a child. The learned Court below has mentioned in the impugned order the name of the victim and her father's name who is the informant, which are good enough to disclose her full identity. The Supreme Court, examining the provisions of Section 228-A of the Indian Penal Code, Section 24 of the Protection of Children from Sexual Offences Act, 2012, Section 74 of the Juvenile Justice (Care and Protection of Children) Act, 2015, has repeatedly cautioned that identification of a child, in conflict with law or a child in need of care and protection or a child victim or a witness of a crime involved in



WWW.LIVELAW.IN

such matters, should not be disclosed. Section 74 of the Juvenile Justice (Care and Protection of Children) Act, 2015 reads as under :-

"74. Prohibition on disclosure of identity of children.—(1) No report in any newspaper, magazine, news-sheet or audio-visual media or other forms of communication regarding any inquiry or investigation or judicial procedure, shall disclose the name, address or school or any other particular, which may lead to the identification of a child in conflict with law or a child in need of care and protection or a child victim or witness of a crime, involved in such matter, under any other law for the time being in force, nor shall the picture of any such child be published:

Provided that for reasons to be recorded in writing, the Board or Committee, as the case may be, holding the inquiry may permit such disclosure, if in its opinion such disclosure is in the best interest of the child.

(2) The Police shall not disclose any record of the child for the purpose of character certificate or otherwise in cases where the case has been closed or disposed of.

(3) Any person contravening the provisions of sub-section (1) shall be punishable with imprisonment for a term which may extend to six months or fine which may extend to two lakh rupees or both."

13. Section 228-A of the Indian Penal Code reads thus

:-

"228-A. Disclosure of identity of the victim of certain offences, etc.—(1) Whoever prints or publishes the name or any matter which may make known the identity



WWW.LIVELAW.IN

of any person against whom an [offence under Section 376, [Section 376-A, Section 376-AB, Section 376-B, Section 376-C, Section 376-D, Section 376-DA, Section 376-DB] or Section 376-E] is alleged or found to have been committed (hereafter in this section referred to as the victim) shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.

(2) Nothing in sub-section (1) extends to any printing or publication of the name or any matter which may make known the identity of the victim if such printing or publication is—

(a) by or under the order in writing of the officer-in-charge of the police station or the police-officer making the investigation into such offence acting in good faith for the purposes of such investigation; or

(b) by, or with the authorisation in writing of, the victim; or

(c) where the victim is dead or minor or of unsound mind, by, or with the authorisation in writing of, the next of kin of the victim:

Provided that no such authorisation shall be given by the next of kin to anybody other than the chairman or the secretary, by whatever name called, of any recognised welfare institution or organisation.

Explanation.—For the purposes of this sub-section, “recognised welfare institution or organisation” means a social welfare institution or organisation recognised in this behalf by the Central or State Government.

(3) Whoever prints or publishes any matter in relation to any proceeding before a court with respect to an offence referred to in sub-section (1) without the previous permission of such court shall be punished with imprisonment of either description for a term which may



WWW.LIVELAW.IN

extend to two years and shall also be liable to fine.

***Explanation.*—The printing or publication of the judgment of any High Court or the Supreme Court does not amount to an offence within the meaning of this section.]”**

14. Section 24 of POCSO Act reads thus :-

“24. Recording of statement of a child.-(1) The statement of the child shall be recorded at the residence of the child or at a place where he usually resides or at the place of his choice and as far as practicable by a woman police officer not below the rank of sub-inspector.

(2) The police officer while recording the statement of the child shall not be in uniform.

(3) The police officer making the investigation, shall, while examining the child, ensure that at no point of time the child come in the contact in any way with the accused.

(4) No child shall be detained in the police station in the night for any reason.

(5) The police officer shall ensure that the identity of the child is protected from the public media, unless otherwise directed by the Special Court in the interest of the child.”

15. The Supreme Court in case of *Nipun Saxena and another vs. Union of India* reported in (2019) 2 SCC 703 noticing aforesaid statutory provisions has specifically held in paragraph 50 as under :-

“50. In view of the aforesaid discussion, we



WWW.LIVELAW.IN
issue the following directions:

50.1. No person can print or publish in print, electronic, social media, etc. the name of the victim or even in a remote manner disclose any facts which can lead to the victim being identified and which should make her identity known to the public at large.

50.2. In cases where the victim is dead or of unsound mind the name of the victim or her identity should not be disclosed even under the authorisation of the next of kin, unless circumstances justifying the disclosure of her identity exist, which shall be decided by the competent authority, which at present is the Sessions Judge.

50.3. FIRs relating to offences under Sections 376, 376-A, 376-AB, 376-B, 376-C, 376-D, 376-DA, 376-DB or 376-E IPC and the offences under POCSO shall not be put in the public domain.

50.4. In case a victim files an appeal under Section 372 CrPC, it is not necessary for the victim to disclose his/her identity and the appeal shall be dealt with in the manner laid down by law.

50.5. The police officials should keep all the documents in which the name of the victim is disclosed, as far as possible, in a sealed cover and replace these documents by identical documents in which the name of the victim is removed in all records which may be scrutinised in the public domain.

50.6. All the authorities to which the name of the victim is disclosed by the investigating agency or the court are also duty-bound to keep the name and identity of the victim secret and not disclose it in any manner except in the report which should only be sent in a sealed cover to the investigating agency or the court.

50.7. An application by the next of kin to authorise disclosure of identity of a dead victim or of a



WWW.LIVELAW.IN

victim of unsound mind under Section 228-A(2)(c) IPC should be made only to the Sessions Judge concerned until the Government acts under Section 228-A(1)(c) and lays down criteria as per our directions for identifying such social welfare institutions or organisations.

50.8. In case of minor victims under POCSO, disclosure of their identity can only be permitted by the Special Court, if such disclosure is in the interest of the child.

50.9. All the States/Union Territories are requested to set up at least one “One-Stop Centre” in every district within one year from today.”

(underlined for emphasis)

16. In case of *State of Punjab vs. Gurmit Singh and others*, reported in (1996)2 SCC 384, the Supreme Court has noted that the courts should, as far as possible, avoid disclosing the name of the prosecutrix in their orders to save further embarrassment to the victim of sex crime. The anonymity of the victim of the crime must be maintained as far as possible throughout, the Supreme Court has ruled. The Supreme Court noticing repeated use of the name of the victim in the order under appeal, observed that the victim could have just been referred to as the prosecutrix.

17. In case of *Bhupinder Sharma vs. State of H.P.* reported in (2003) 8 SCC 551, the Supreme Court held in paragraph 2 as under :-

“2. We do not propose to mention the name of



WWW.LIVELAW.IN

the victim. Section 228-A of the Penal Code, 1860 (in short “IPC”) makes disclosure of the identity of victims of certain offences punishable. Printing or publishing the name or any matter which may make known the identity of any person against whom an offence under Sections 376, 376-A, 376-B, 376-C or 376-D is alleged or found to have been committed can be punished. True it is, the restriction does not relate to printing or publication of judgment by the High Court or the Supreme Court. But keeping in view the social object of preventing social victimization or ostracism of the victim of a sexual offence for which Section 228-A has been enacted, it would be appropriate that in the judgments, be it of a High Court or a lower court, the name of the victim should not be indicated. We have chosen to describe her as “victim” in the judgment.”

(underlined for emphasis)

18. Referring to the said decision, the Supreme Court in case of *Nipun Saxena* (supra) has specifically held that though the bar imposed under Section 228-A of the IPC does not in term apply to the printing or publication of judgments of High Courts and the Supreme Court, in view of the explanation to Section 228-A, keeping in view the social object and preventing victims from ostracizing, it would be appropriate that in the judgments of all the courts i.e. trial courts, High Courts and the Supreme Court, the name of the victim should not be indicated.”

19. In the present case there was no need for the court



WWW.LIVELAW.IN

below to have disclosed identity of the victim in the impugned order, who could have been safely referred to as the victim or could have been described by a pseudonym. In view of the reiteration of law by the Supreme Court in case of *Nipun Saxena* (supra) it is observed that all courts subordinate to this Court shall ensure strict adherence to the same name of victim of an offence punishable under Sections 376, 376-A, 376-B, 376-C or 376-D or the offence punishable under the provisions of POCSO Act should not be indicated, unless such disclosure becomes imperative, for the reasons recorded in writing by the special courts.

(Chakradhari Sharan Singh, J)

Pawan/-

U		T	
---	--	---	--

WWW.LIVELAW.IN

