

**IN THE HIGH COURT OF JUDICATURE AT PATNA  
CRIMINAL APPEAL (DB) No.851 of 2018**

Arising Out of PS. Case No.-186 Year-2016 Thana- RIGA District- Sitamarhi

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Guddu Kumar S/o Late Babu Mahto, R/o Vill.- Chainpura, P.S.- Riga,  
District- Sitamarhi Bihar.

... .. Appellant

Versus

The State Of Bihar

... .. Respondent

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**Appearance :**

For the Appellant : Mr. Ajay Kumar Thakur, Advocate

Mr. Nilesh Kumar, Advocate

For the Respondent State: Mr. Sri Sadanand Paswan, Spl. P.P.

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**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN  
SINGH**

**and**

**HONOURABLE MR. JUSTICE KHATIM REZA**

ORAL ORDER

**(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN  
SINGH)**

6 21-06-2022

Re: I.A. No. 1 of 2019: -

This application has been filed seeking suspension of sentence and release of the appellant on bail during the pendency of this appeal under Section 389(1) of the Code of Criminal Procedure.

2. The sole appellant has assailed the judgment and order of learned 1<sup>st</sup> Additional Sessions Judge-cum-Special Judge (Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989), Sitamarhi, dated 14.06.2018, passed in G.R. No.2175 of 2016/Trial No.47A of 2016, whereby the appellant has been convicted of the offences punishable under Sections 363, 366A, 376 of the Indian Penal Code, Section 3(1)



(w)(i), 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, and under Sections 4, 12 of the Protection of Children from Sexual Offences Act, 2012, and vide order dated 20.06.2018 sentenced him to undergo rigorous imprisonment for five years and fine of Rs.2000.00 under Section 363 of the Indian Penal Code, rigorous imprisonment for five years and fine of Rs.2000.00 under Section 366A of the Indian Penal Code, rigorous imprisonment for ten years and fine of Rs.5000.00 under Section 376 of the Indian Penal Code, rigorous imprisonment for one year and fine of Rs.1000.00 under Section 3(1)(w)(i) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, imprisonment for life and fine of Rs.10000.00 under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and rigorous imprisonment for ten years and fine of Rs.5000.00 under Section 4 of the Protection of Children from Sexual Offences Act, 2012 and rigorous imprisonment for two years and fine of Rs.1000.00 under Section 12 of the Protection of Children from Sexual Offences Act, 2012. The sentences are to run concurrently in terms of the impugned judgment and order of the trial court.

**3.** This criminal appeal was filed on 19.07.2018.



4. Evidently, thus, the appeal is pending for nearly four years.

5. It is being submitted on behalf of the appellant that there are good grounds for interfering with the impugned judgment and order under appeal. It is being additionally submitted that there is no likelihood of the appeal being taken up for final hearing in near future, which is an additional ground for suspending the sentence and release of the appellant on bail under Section 389(1) of the Code of Criminal Procedure.

6. In view of the aforesaid submission made on behalf of the appellant, we consider, at this juncture, apt to notice a significant statutory provision under sub-section (4) of Section 374 of the Code of Criminal Procedure, which reads as under: -

*"(4 ) When an appeal has been filed against a sentence passed under section 376, section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB or section 376E of the Indian Penal Code, the appeal shall be disposed of within a period of six months from the date of filing of such appeal."*

7. It is evident on bare reading of sub-section (4) of Section 374 of the Code of Criminal Procedure that it mandates disposal of appeals within a period of six months from the date



of filing of appeals, if such appeals are filed against against a sentence passed under section 376, section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB or section 376E of the Indian Penal Code.

**8.** The use of the expression ‘**shall**’ in sub-section (4) of Section 374 of the Code of Criminal Procedure cannot be lost sight of as it discloses the legislative intention underlying the said provision for expediting disposal of such appeals within a period prescribed under the said provision.

**9.** It is noteworthy that sub-section (4) of Section 374 came to be inserted in Section 374 of the Code by the Criminal Law (Amendment) Act, 2018, enacted to amend Indian Penal Code, Indian Evidence Act and the Code of Criminal Procedure and Protection of Children from Sexual Offences Act, 2012. The statement of objects and reasons as disclosed in the said amendment Act reads as under: -

*“Statement of Objects and Reasons.-  
Recent incidents of rape and gang rape on women under the age of sixteen years and twelve years have shaken the conscience of the entire Nation. Therefore, the offences of rape and gang rape on women under the age of sixteen years and twelve years required*



*effective deterrence through legal provisions of more stringent punishment. Some of the incidents in recent years have been marked by increased brutality and violence perpetrated on minor girls. This has fueled demands from various sections of the society to make the penal provisions more stringent and effective, immediate arrest of the accused and ensure speedy trial in such cases.*

*2. As the Parliament was not in session and immediate action was required to be taken in this regard to make necessary amendments in the Indian Penal Code, Indian Evidence Act, 1872, the Code of Criminal Procedure, 1973 and the Protection of Children from Sexual Offences Act, 2012, the President promulgated the Criminal Law (Amendment) Ordinance, 2018 on 21st April, 2018.*

*3. It is, therefore, proposed to introduce the Criminal Law (Amendment) Bill, 2018 to replace the Criminal Law (Amendment) Ordinance, 2018, which, inter alia, provides for:*

*(a) punishment for the offence of rape from the minimum imprisonment of seven years to ten years, which is extendable to imprisonment for life;*

*(b) punishment for the offence of rape on a woman under sixteen years of age*



*shall be rigorous imprisonment for a term not less than twenty years but may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life and shall also be liable to fine;*

*(c) punishment for the offence of rape on a woman under twelve years of age shall be rigorous imprisonment for a term not less than twenty years but may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life and with fine or with death;*

*(d) punishment for the offence of gang rape on a woman under sixteen years of age shall be imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life and with fine;*

*(e) punishment for the offence of gang rape on a woman under twelve years of age shall be imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life and with fine or with death;*

*(f) investigation in relation to all rape cases shall be completed within a period of two months from the date on which the information recorded by the officer-in-charge of the police station;*



*(g) completion of inquiry or trial relating to the offence of rape, within a period of two months;*

***(h) dispose of an appeal against a conviction or a acquittal in rape cases within a period of six months from the date of filing of the appeal;***

*(i) the provisions of anticipatory bail shall not be applicable in cases of rape or gang rape of woman under sixteen and twelve years of age;*

*(j) consequential amendments in the Indian Penal Code, Indian Evidence Act, 1872, the Code of Criminal Procedure, 1973 and the Protection of Children from Sexual Offences Act, 2012 relating to the cases of rape, gang rape of the woman below the age of sixteen years, twelve years, repeat offenders, to extend the applicability of compulsory registration of FIRs, fine imposed to be paid to victim, facilitate better recording of evidence and protect the dignity of rape survivor and treatment free of cost in hospitals.*

*4. The Bill seeks to achieve the above objectives.”*

*(underscored for emphasis)*

**10.** It is evident from the statement of objects and reasons that considering the necessity of immediate action required to be taken since the Parliament was not in session,



Criminal Law (Amendment) Ordinance, 2018 was promulgated on 21.04.2018, which stipulated, *inter alia*, that appeal against the judgment of conviction or acquittal in relation to offences punishable under section 376, section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB or section 376E of the Indian Penal Code must be disposed of within six months from the date of filing of the appeal.

**11.** In our opinion, thus, keeping in mind the statutory mandate, there is urgent need of expediting final hearing and disposal of such appeals, which are covered by sub-section (4) of Section 374 and sub-section (4) Section 377 of the Code.

**12.** We accordingly direct the Registry to take all necessary measures as may be required to identify all such appeals which are pending before this Court and are covered by sub-section (4) of Section 374 or sub-section (4) of Section 377 of the Code of Criminal Procedure, so that effective steps may be taken for getting such matters listed under appropriate heading after obtaining necessary orders from Hon'ble the Chief Justice.

**13.** We are of the considered view that it is in the interest of justice to adhere to the mandatory statutory





prescriptions under sub-section (4) of Section 374 or sub-section (4) of Section 377 of the Code of Criminal Procedure.

**14.** List this matter on 19.07.2022, when the Court will consider passing appropriate orders on I.A. No. 1 of 2019, if required.

**15.** Learned Special Public Prosecutor (Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989) for the State shall, in the meanwhile, inform this Court as to whether the informant has been in fact made known about the pendency of this appeal before this Court.

**(Chakradhari Sharan Singh, J)**

**(Khatim Reza, J)**

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