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**IN THE HIGH COURT OF JHARKHAND AT RANCHI**

B.A. No. 4304 of 2021

Anil Kunwar @ Anil Kumr @ Anil Kumar.....Petitioner  
Versus

State of Jharkhand. ....

Opp. Party

.....  
Coram: Hon'ble Mr. Justice Ananda Sen  
Through:-Video Conferencing

For the Petitioner  
For the State

.....  
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.....

: Mr. Sudhanshu S. Choudhary, Advocate  
: Mr. Nawin Kr. Singh, A.P.P.

4/25.06.2021 A minor girl was sexually assaulted and this petitioner is the accused.

The lawyers have no objection with regard to the proceeding, which has been held through video conferencing today at 11.00 A.M. They have no complaint in respect to the audio and video clarity and quality.

Heard learned counsel appearing for the petitioner and the learned counsel for the State, who opposes the prayer for bail of the petitioner.

Learned counsel appearing for the petitioner submits that the victim has not been examined in this case nor the victim is a charge sheet witness. He submits that in spite of several letters written to the Superintendent of Police, Sahebganj and the D.I.G., Dumka, the victim has not been produced and the petitioner is languishing in custody for more than three years.

This is an application wherein the petitioner has renewed his prayer for bail, which was earlier rejected by this Court on merits. The case is under Section 341, 323 376 & 511 of the Indian Penal Code and Section 8 of POCSO Act. The victim girl is minor aged about 13 years. Statement of the victim girl was recorded under Section 164 Cr.P.C., which is apparent from the earlier rejection order dated 08.08.2018 passed in B.A. No. 5012 of 2018.

Counsel for the petitioner submits that all the charge sheet witnesses have been examined in this case.

Charge sheet is also on record as Annexure-3. From the charge sheet I find that the Investigating Officer has not made the victim a charge sheet witnesses. This is really surprising that in a case, which has been registered under POCSO Act and the victim is minor aged about 13 years, why the Investigating Officer has not made the victim as a charge sheet witness. Even the supervising authority has overlooked this fact. This Court fails to understand as to why in an important case the victim has

not been made a charge sheet witness. Further, from the order sheet of the Court below I find that since November, 2019 the trial court is writing letters to the Superintendent of Police, Sahebganj, DIG, Dumka and also to the Director General of Police, Jharkhand to produce the victim as court witness, but those letters/directions have yielded no response. All, the Superintendent of Police, Sahebganj DIG, Dumka and D.G.P., Jharkhand did not take any action to produce the victim. These facts create doubt in the mind of the Court. Is the police authority taking side of the accused persons by not bringing the victim in the witness box, prima-facie this Court feels so. Prima-facie the act of the Investigating Officer, Supervising Officer, Superintendent of Police, Sahebganj and the DIG, Dumka cannot be said to be bonafide. The questions are bound to arise if this type of investigation is made, leaving out the main person as witness in the charge sheet. Further, when the court directed to produce the victim, these officers shut their ears and did not even respond to the directions of the court. The letter of a court is not merely a letter. It is a direction upon the authority to do what has been mentioned in the said letter. The letter is preceded by a judicial order. By not doing so and by not responding to those directions, prima-facie, this Court feels that the officers have committed contempt of court. It is high time that this type of attitude should be taken note of and should be rectified. The rectification should come either internally or by external sources by punishing these officers after initiating a proceeding for contempt. Thus, before proceeding any further, I direct the Director General of Police, Jharkhand to look into this case and inform this Court by filing a personal affidavit :-

- 1. As to why the victim was not made a charge sheet witness.*
- 2. Who is responsible for not making the victim as charge sheet witness.*
- 3. If the DGP finds that till date no responsibility has been fixed, the DGP will fix the responsibility and will furnish information to this Court and he shall also inform this Court as to what steps have been taken against those persons because of whose laches the victim has not been shown as charge sheet witness.*
- 4. Why the Superintendent of Police, Sahebganj and DIG, Dumka have not responded to the directions/letters of the Court which directs the officers to produce the victim as a court witness.*
- 5. What steps the DGP himself has taken to ensure production of the victim before the Court below pursuant to the order dated 16.01.2020 and letter dated 27.01.2020, which the court below has address to him for production of the victim.*

6. *What steps DGP intends to take against the erring officials who have not produced the victim before the court so that her evidence could be recorded.*

7. *Why not a contempt proceeding be initiated against the Investigating Officer, Officer-in-charge Mirzachouki P.S., Sahibganj, the Superintendent of Police, Sahebganj and DIG, Dumka for willfully and deliberately violating the orders of the court wherein the trial court had directed them to produce the victim as a witness.*

This affidavit should be filed by the Director General of Police, Jharkhand personally within three weeks from today after making proper inquiry and verification.

List this case after four weeks.

Let a copy of this order be forwarded to the Director General of Police, Jharkhand. A copy of this order be also forwarded to the Secretary, Ministry of Home Affairs, Government of India, Room No. 113, North Block, New Delhi.

Let a copy of this order be also handed over to Mr. Rajeev Sinha, Assistant Solicitor General of India for onward communication to the Secretary.

**(Ananda Sen, J)**