

**IN THE HIGH COURT OF JUDICATURE AT PATNA  
CRIMINAL APPEAL (SJ) No.815 of 2023**

Arising Out of PS. Case No.-244 Year-2020 Thana- DEEPNAGAR District- Nalanda

Aklesh Kumar @ Akhilesh Kumar Son of Ajay Prasad @ Ajay Mahto  
Resident of Village- Mahanandpur, P.S.- Deep Nagar, District- Nalanda

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

**CRIMINAL APPEAL (SJ) No. 1358 of 2023**

Arising Out of PS. Case No.-244 Year-2020 Thana- DEEPNAGAR District- Nalanda

1. Ajay Mahto @ Ajay Prasad Son of Late Tulsee Mahto R/O Village- Mahanandpur, P.S.- Deep Nagar, District- Nalanda
2. Baby Devi Wife Of Ajay Mahto @ Ajay Prasad R/O Village- Mahanandpur, P.S.- Deep Nagar, District- Nalanda

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

**Appearance :**

(In CRIMINAL APPEAL (SJ) No. 815 of 2023)

For the Appellant/s : Mr. Birendra Kumar, Advocate

: Mr. Kumud Kishore, Advocate

For the Respondent/s : Mr. Zeyaul Hoda, APP

(In CRIMINAL APPEAL (SJ) No. 1358 of 2023)

For the Appellant/s : Mr. Bishwa Bijay Kumar, Advocate

: Mr. Birendra Kumar, Advocate

For the Respondent/s : Mr. Anita Kumari Singh, APP

**CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA  
ORAL ORDER**

4      22-11-2023                      Heard learned counsel appearing on behalf of the parties.

2. The present matter is taken on board for considering prayer of bail and suspension of sentence of above



named accused/appellant during pendency of appeal under Section 389 (1) of the Code of Criminal Procedure (in short Cr.P.C.).

3. The appellant has been convicted by the judgment of conviction dated 06.01.2023 and order of sentence dated 11.01.2023 passed by learned Additional Sessions Judge-VI-cum-Special Judge POCSO Act, Nalanda at Biharsharif in POCSO Case No. 66 of 2020 (arising out of Deep Nagar P.S. Case No. 244 of 2020), whereby he has been convicted under Section 354 and 323/34 of the Indian Penal Code (hereinafter referred to as 'IPC') and Section 10 read with Section 9 (m) of the Prevention of Children from Sexual Offences (hereinafter referred to as 'POCSO') Act and he has been sentenced to undergo rigorous imprisonment for five years and fine of Rs. 5,000/- and in default of payment of fine, further undergo simple imprisonment for one month for the offence punishable under Section 10 read with Section 9 (m) of the POCSO Act and fine of Rs. 1,000/- and in default of payment of fine, further undergo simple imprisonment for ten days for the offence punishable under Section 323/34 of the IPC. All sentences shall run concurrently.

4. Learned counsel for the appellant submitted by



referring deposition of PW 2/victim that appellant did not touch the private parts of the victim or makes the victim touch the private parts of any other person. It is submitted that PW 2/victim though stated in her examination-in-chief that appellant offered her cash of Rs. 200/- and asked to come behind the bushes near to agricultural field, which she denied but in her cross-examination she stated that while grazing her goats in field, she did not meet any person of her village. It is further submitted that from the deposition of PW 2, it appears that both parties were in enmity out of local disputes prior to the present occurrence.

5. It is submitted by learned counsel that appellant is in custody for more than one year against the sentence of five years as ordered through impugned judgment of conviction. It is further submitted that appeal is of 2023 and is not likely to be listed for final hearing in the near future. In support of the submissions learned counsel relied upon the legal report of **Anurag Baitha v. State of Bihar** reported in **AIR 1987 Pat 274 (FB) : 1987 PLJR 485 (FB)**.

6. Learned APP appearing on behalf of respondent-State, while opposing the prayer of bail submitted that PW 2/victim specifically deposed against the appellant to hold her



hand and forced to come behind the bushes.

7. Considering the evidence of PW 2/victim in totality, where accused/appellant is in custody for more than one year and as this appeal is not likely to be taken up for final hearing in the near future, accordingly, the accused/appellant, above named, is directed to be released on bail in connection with Deep Nagar P.S. Case No. 244 of 2020 on furnishing bail bond of Rs.10,000/- (Rupees Ten Thousand) with two sureties of the like amount each to the satisfaction of learned Additional Sessions Judge-VI-cum-Special Judge POCSO Act, Nalanda at Biharsharif/concerned Court.

8. Sentence of imprisonment imposed on the appellant is suspended till disposal of the appeal and recovery of fine be also kept in abeyance.

9. Appellant to co-operate in disposal of appeal.

**(Chandra Shekhar Jha, J.)**

S.Tripathi/-

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