

**IN THE HIGH COURT OF JHARKHAND AT RANCHI**  
**B.A. No.7931 of 2020**

Sarfaraz Ahmad @ Sarfaraz Alam @ Sarfaraz Ansari  
... Petitioner  
Versus  
The State of Jharkhand ... Opposite Party

**Coram: HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY**

For the Petitioner : Mr. Pankaj Kumar, Adv.  
For the State : Mr. Rajneesh Vardhan, Addl. P.P.  
For the Informant : Mr. Rahul Pandey, Adv.

**03/02.02. 2021** Heard the parties through video conferencing.

The Stamp Reporter has raised the objection that since the offence punishable under the penal provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is also involved in this case, therefore the appellant must have filed an appeal under Section 14-A of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989. Drawing attention of this court to the provisions of Section 42A of the Prevention of Children from Sexual Offences Act, 2012 which read as under:-

*“42A. Act not in derogation of any other law.- The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force and, in case of any inconsistency, the provisions of this Act shall have overriding effect on the provisions of any such law to the extent of the inconsistency.”*

Mr. Pankaj Kumar, learned counsel for the petitioner submits that under the POCSO Act it has been provided that notwithstanding with anything contained in the Cr.P.C., there is a separate procedure for reporting of cases and protocol for media and it contemplates a special procedure for recording statement of child below 18 years of age and there is another safeguard as it provides that at the time of testifying, the victim shall not be exposed to any of the accused and for that purpose the statement may be recorded through video conferencing or through any other devices. It is then submitted that the special court constituted under the POCSO Act has been vested with power to pass an order for interim compensation to meet the immediate needs of the child for relief or rehabilitation at any stage after lodging the F.I.R. and also to recommend the award of compensation to be paid by the State Government within 30 days of receipt of such order.

It is submitted by Mr. Pankaj Kumar- learned counsel for the petitioner that comparative analysis of the objects, scheme and scope of Protection of Children from Sexual Offences Act, 2012 and Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 shows that, the special provision or procedure for recording the statement of the victim child, safe guard provided at the time of testifying of the victim child and the scheme for rehabilitation of the child victim; has not been contemplated in the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989; therefore in any case, involving both the offences punishable under the protection of Child from Sexual Offences Act, 2012 and Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989; the procedure laid down under the provisions of Protection of Child from Sexual Offences Act, 2012 shall be applicable. In this respect, the learned counsel for the petitioner relies upon the judgment on Hon'ble Patna High Court in the case of **Guddu Kumar Yadav Vs. The State of Bihar** in Criminal Miscellaneous No.52792 of 2019 dated 07.11.2019. Hence, it is submitted that the instant bail application under Section 439 Cr.P.C. is maintainable therefore the objection raised by the Stamp Reporter be overruled.

It is pertinent to mention here that in the case of **Guddu Kumar Yadav Vs. The State of Bihar (supra)**, the Patna High Court, relied upon the judgment of the Allahabad High Court in the case of **Rinku Versus State of U.P., (Cr. Miscellaneous Bail Application No. 33075 of 2018** wherein the Allahabad High Court framed the following issues for consideration

*(i) Whether, a case, which being instituted under penal provisions of two Special Acts as referred above, should be tried by the Special Court constituted under SC/ST Act or by the Special Court constituted under POCSO Act.*

*(ii) Whether, an order of rejection of bail to an accused by the Special Court, POCSO Act, in a case instituted for committing offences under the POCSO Act, and the SC/ST Act, is amenable to appeal in terms of the Section 14A (2) of SC/ST Act.*

And answered them as under

*(A) Question No.(i) stands answered in the affirmative in terms that where in a case, offences both under the POCSO Act and SC/ST Act are charged arising out of the same crime, that under the Code may be tried at the same trial, the Special Court, POCSO Act, would have jurisdiction to determine the bail plea of an accused to the exclusion of the Special Court, SC/ST Act;*

*(B) Question No.(ii) stands answered in the negative in terms that where an order declining bail to an accused is passed by the Special Court,*

*POCSO Act, in a crime involving offences, both under the POCSO Act and the SC/ST Act, that order would not be final, and appealable under Section 14A(2) of the SC/ST Act; an application under Section 439 of the Code would alone be maintainable before the High Court."*

Patna High Court in that judgment also relied upon the judgment of Madras High Court, in the case of **Registrar (Judicial) Vs. Krishnnaswami Naidu & Anr.**, wherein considering the same issue the court observed as follows :-

*"43. Yet another question has also been included in this reference, namely, when offences under the POCSO Act have been committed against a child belonging to either a Scheduled Caste or Scheduled Tribe, which Court is competent to remand the accused and to try the offender. In other words, whether it is the Special Court under the POCSO Act or the exclusive Special Court or the Special Court under the SC & ST Act which has the power to remand the accused during investigation, to take cognizance of the offences on a police report or on a private complaint and also to try the offender."*

*Xxxxxxxxxxxxxxxxxxxxxxx*

*56. If the act of the accused is an offence under the POCSO Act and also an offence under the SC & ST Act, the Special Court under the POCSO Act alone shall have jurisdiction to exercise all the powers including the power to remand the accused under Section 167 of the Code, to take cognizance of the offences either on a police report or on a private complaint and to try the offender. The said Special Court shall have jurisdiction to grant all the reliefs to the victim for which the victim is entitled to under the SC & ST Act."*

In the case of **Guddu Kumar Yadav Vs. The State of Bihar (supra)**, the Patna High Court relied upon the judgment of the Supreme Court of India in the case of **Sharat Babu Digumarti Versus Govt. of NCT of Delhi, 2017 (1) PLJR (SC) 382** wherein the Supreme Court of India inter alia held that Where there are two special statutes which contain non obstante clauses the later statute must prevail because at the time of enactment of the later statute, the Legislature was aware of the earlier legislation and it's non obstante clause and the Legislature still confers the later enactment with a non obstante clause, means that the Legislature wanted that the later enactment to prevail. If the Legislature does not want the later enactment to prevail then it could and would provide in the later enactment that the provisions of the earlier enactment which in other words means that in case of conflict between two enactments the earlier enactment shall prevail.

The Patna High Court in that case of **Guddu Kumar Yadav Vs. The State of Bihar (supra)** also relied upon the judgment of Supreme Court of India in the cases of **ASHOKA MARKETING LTD. AND ANOTHER Versus PUNJAB NATIONAL BANK AND OTHERS, (1990) 4 SCC 406** and **Sarwan Singh Versus Kasturi Lal, AIR 1977, S.C,**

265, in support of the principle of law of that in the case of inconsistency between the provisions of two enactments, both of which can be regarded as special in nature, the conflict has to be resolved by reference to the purpose and policy underlying the two enactments and the clear intendment conveyed by the language of the relevant provisions therein.

The Patna High Court in that case of **Guddu Kumar Yadav Vs. The State of Bihar (supra)** further considered the judgment rendered by the Hon'ble Supreme Court of India in the Case of **Union of India Vs. Ranjit Kumar Saha and Another, (2019) 7 SCC 505**, wherein it was held that in case of apparent conflict between two enactments, such enactments so far as reasonably possible, be construed to be in harmony with each other and it is only when there is an irreconcilable conflict between the new provision and the prior statute relating to the same subject-matter, that the former, being the later expression of the legislature, may be held to prevail, the prior law yielding to the extent of the conflict.

The Patna High Court in that case of **Guddu Kumar Yadav Vs. The State of Bihar (supra)** also considered as under in paragraph 20, 21, 22 and 23

*20. Under the POCSO Act, notwithstanding anything contained in the Cr.P.C., there is a separate procedure for reporting of cases and a protocol for media, it contemplates a Special Procedure for recording of statement of child i.e. below 18 years of age. There is another safeguard that at the time of testifying, the victim is not exposed in any way to the accused and for that purpose statement may be recorded through videoconferencing or curtains or any other device. It is worthwhile to notice that the Special Court constituted under the POCSO Act, has been invested with power to pass an order for interim compensation to meet the immediate needs of the child for relief or rehabilitation at any stage after lodging the F.I.R., and also to recommend the award of compensation to be paid by the State Government within thirty days of receipt of such order. The Special Court can recommend the award of the compensation even in case of acquittal or discharge or accused being not traced or identified, if in the opinion of the Special Court the child has suffered loss or injury as a result of that offence.*

*21. After comparative analysis of the object, scheme and scope of the both Special Acts, i.e. POCSO Act and SC/ST Act, I, nowhere find such Special Provisions or procedure under the SC/ST Act for reporting of cases, recording of statements of the victim child, safeguard provided at the time of testifying the victim child and such a broad scheme of compensation and rehabilitation for child victim and the power invested to the Special Court as to grant interim compensation or compensations notwithstanding the result of the prosecution, as being contemplated under the POCSO Act.*

*In the SC/ST Act, no special procedure being contemplated for trial of the offences. The Special Court constituted under the SC/ST Act, shall*

*follow almost procedure contemplated under the Cr. P.C. for trial of Session Cases. In the said Act there being no separate provision for investigation of the offences relating to child victims belonging to that section of the society.*

*22. Therefore, this Court is of the opinion that the POCSO Act takes within its fold the protection of children of all sections of the society including those belonging to SC/ST. The POCSO Act, being later legislation than the SC/ST Act, and a self-contained legislation having number of safeguards to the children at every stage of proceeding with the better scheme of compensation and rehabilitation for child victims including those belonging to SC/ST.*

*23. There is no dispute that the Special Court to be constituted under the both Acts as referred above are Court of Session and the courts so established or specified shall have the power to directly take cognizance of the offences under the respective Acts.*

*Section 14 of the SC/ST Act talks about the establishment of special court and exclusive special court for the purpose of providing speedy trial of the offences under the said Act. Nowhere, it provides that while trying the offences under the said Act the Special Court having jurisdiction to try an offence other than the offences of SC/ST Act. On the contrary, Section 28 of the POCSO Act, which talks about the designation of a Court of Session to be a Special Court to try the offences under the said Act, further explicitly provides under sub-section Patna High Court CR. MISC. No.52792 of 2019(5) dt.07-11-2019 (2) of Section 28 that the Special Court designated under Section 28 of the POCSO Act, while trying an offence under the said Act, shall also try an offence other than the offences referred to in sub-section (1), with which the accused may under the Code of Criminal Procedure, 1973, be charged at the same trial."*

The Patna High Court ultimately held in **Guddu Kumar Yadav Vs. The State of Bihar (supra)** that if a case is registered for the offences under two special Acts, i.e. Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and POCSO Act, such case should be tried by Special Court constituted under POCSO Act, especially, taking into consideration sub-section (2) of Section 28 under POCSO Act which contemplates that a Special Court while trying an offence under the said Act having jurisdiction to try an offence other than the offence referred to in sub-section (1) of Section 28 of the POCSO Act, with which the accused may under the Code of Criminal Procedure be charged at the same trial.

I am in agreement with the concurrent views expressed by the Hon'ble Madras High Court, Allahabad High Court as already mentioned in this order and Patna High Court in the case of **Guddu Kumar Yadav Vs. The State of Bihar (supra)** and hold that when order of granting or refusing bail to an accused is passed by the Special Court constituted under POCSO Act in connection with the case involving the offences under both Acts i.e., POCSO Act and Scheduled Castes and

Scheduled Tribes (Prevention of Atrocities) Act, 1989 , the same would not with appealable under Section 14 A (ii) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and in such cases the application for bail in terms of Section 439 of the Cr.P.C. would be maintainable before the High Court.

Further an appeal under Section 14 (A) Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 will lie only when the orders granting or refusing bail to an accused is passed by the Special Court or the Exclusive Special Court constituted under the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 but in this case the order refusing bail has been passed by the Special Court constituted under the POCSO Act and not the Special Court under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

In view of this observation, the objection raised by the stamp reporter is over ruled.

The petitioner has been made accused in connection with Godda (M) P.S. Case No. 104 of 2020 registered under sections 366A of the Indian Penal Code and Section 8 of POCSO Act and later on becomes Special (POCSO) Case No. 27 of 2020 in which cognizance has been taken under Section 366A/34 & 376 of I.P.C. and Section 4 of the POCSO Act, 2012 and also under Section 3(2)(Va) of SC/ST (Prevention of Atrocities) Act.

Learned counsel for the petitioner submits that the allegation against the petitioner is that the petitioner enticed away the minor victim girl to marry her. It is submitted that the allegation against the petitioner is false. Drawing attention of this Court towards Annexure-3/A at page nos. 7-8 of the supplementary affidavit, which is the copy of the certified copy of the joint compromise petition filed by the parties in the court of A.S.J.-III, Godda, it is submitted by the learned counsel for the petitioner that the parties have compromised the matter and the informant does not want to proceed with the case. It is then submitted that the petitioner undertakes to co-operate with the trial of the case. It is lastly submitted that the petitioner has been in custody since 01.06.2020 as mentioned in paragraph 8 of the bail application. Hence it is submitted that the petitioner be released on bail.

Learned Addl. P.P. opposes the prayer for bail.

Considering the facts of this case, the above named petitioner is directed to be enlarged on bail on furnishing bail bond of Rs.25,000/- (Rupees twenty five thousand) with two sureties of the like amount each to the satisfaction of learned Add. Sessions Judge-III-cum Spl. Judge (POCSO) at Godda in connection with Godda (M) P.S. Case No. 104 of 2020 with the condition that he will co-operate with the trial of the case.

AFR-Pappu/

**(Anil Kumar Choudhary, J.)**