

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1204 of 2018

Arising Out of PS. Case No.-130 Year-2016 Thana- BHAGWANPUR District- Vaishali

Kundan Kumar, S/o Jageshwar Paswan, resident of Village- Muzaffarpur Malahi, P.S. Bhagwanpur, District- Vaishali (under the natural guardianship of petitioner).

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Mazharul Hassan- Advocate
For the Respondent/s	:	Mr. Tarun Prasad Mandal-A.P.P.
For the Informant	:	Mr. Sunil Kumar- Advocate

CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA
ORAL JUDGMENT

22-05-2020

Heard learned counsel appearing for the petitioner, learned Additional Public Prosecutor appearing for the State and learned counsel appearing for the informant through video conferencing.

2. This revision petition has been preferred against the order dated 10.07.2018 passed by the learned Principal Magistrate, Juvenile Justice Board, Vaishali at Hajipur and order dated 14.09.2018 passed by the Additional Sessions Judge-1st, Vaishali at Hajipur in Criminal Appeal No.55 of 2018 arising out of Bhagwanpur P. S. Case No.130 of 2016 registered under Sections 363, 302, 376 D, 201 of the I.P.C. and Sections 4, 6, 8 and 10 of the POCSO Act.



3. The above stated Bhagwanpur P. S. Case No.130 of 2016 was initially registered against unknown for the offences punishable under Section 363 of the I.P.C. on the basis of written report of the informant, who claimed that his granddaughter aged about 4 years was missing since 05.08.2016. Subsequently, the dead body of victim was recovered after 3-4 days from behind the *Bathan* of co-accused Vishnu Kumar and accordingly, Section 302 and other sections were added. The prosecution witnesses as well as police claimed that co-accused Vishnu Kumar as well as the petitioner were apprehended and confessed their guilt disclosing that they not only raped, but also committed murder of deceased.

4. The petitioner was remanded in the above stated case on 10.08.2016 and after remand, he claimed himself to be juvenile. The Juvenile Justice Board conducted the inquiry to ascertain the age of the petitioner and subsequently, the petitioner was found below 18 years of age, but taking the seriousness and nature of the offence, the Juvenile Justice Board referred the matter to the Children Court for trial. The petitioner moved before the Juvenile Justice Board for bail, but his prayer for bail was rejected by the Juvenile Justice Board vide order dated 10.07.2018 and subsequently, the petitioner preferred



Criminal Appeal No.55 of 2018 for grant of bail, but the appeal was too rejected by the Additional Sessions Judge-1st, Vaishali at Hajipur vide order dated 14.09.2018.

5. Learned counsel appearing for the petitioner submits that there is no cogent evidence against the petitioner and except suspicion as well as so called confessional statement that too, before the police. He further submits that the petitioner has been implicated in this case due to village politics and land dispute and moreover, petitioner does not have any criminal antecedent and there is nothing on the record to show that the release of the petitioner shall bring him into the association of known criminals nor there is anything to show that the release of the petitioner shall expose morally, physically or psychologically.

6. The learned Additional Public Prosecutor refuted the above stated submissions pointing out that the dead body of victim was recovered from behind the *Bathan* of co-accused Vishnu Kumar and when the sniffer dog was pressed in service, the said sniffer dog entered into the *Bathan* of co-accused and subsequently, co-accused as well as this petitioner were arrested and they confessed their guilt.

7. Learned counsel appearing for the informant too



opposed the bail prayer submitting that the trial of the petitioner is on the verge of conclusion and furthermore, the petitioner as well as co-accused have committed a very heinous offence and, therefore, petitioner does not deserve the privilege of bail.

8. Having heard the contentions of all the parties, I went through record as well as case diary. Admittedly, the case was initially lodged against unknown persons meaning thereby, none had seen the petitioner and his associate taking away the victim from her *Bathan*. The perusal of entire case diary goes to show that not a single prosecution witness claimed to have seen the petitioner along with victim girl and except the so called confessional statement of petitioner and co-accused that too before police as well as suspicion, there appears to be nothing against the petitioner, who is in jail custody for near-about four years without any substantive progress in his trial.

9. Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015 makes the provision of bail to a child conflict with law. The bail of a child conflict with law is a rule and rejection is an exception. No doubt the proviso of Section 12 of the Act says that the child conflict with law shall not be released on bail, if there is likelihood to bring the aforesaid child conflict with law into association with known



criminals or expose him to moral, physical or psychological danger or the person's release would defeat the ends of justice.

10. In the present case, there is nothing on the record to show that the release of petitioner shall bring him into the association of the known criminals. Admittedly, the petitioner does not have any criminal antecedent nor there is anything to show that prior to his remand, he was in association with known criminals. Similarly, also there is nothing on the record to show that the release of the petitioner shall expose him morally, physically or psychologically in danger. So far ends of justice is concerned, the petitioner is admittedly cooling his heels in observation home for near-about four years without having any substantive progress in his trial as the trial Court has reported that out of proposed sixteen prosecution witnesses, only five prosecution witnesses could be examined till 16.08.2019. Therefore, the aforesaid fact goes to show that in view of Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015, the petitioner should be released on bail.

11. No doubt, serious allegation of rape and murder has been levelled against the petitioner and other accused, but in course of hearing, learned counsel for the



petitioner drew my attention towards post mortem report of deceased and submits that the post mortem report of deceased negates the story of rape.

12. Considering the aforesaid facts and circumstances as well as submissions of the parties, in my view, this revision petition does have merit and should be allowed.

13. Accordingly, the impugned order dated 10.07.2018 passed by the learned Principal Magistrate, Juvenile Justice Board, Vaishali at Hajipur and order dated 14.09.2018 passed by the Additional Sessions Judge-1st, Vaishali at Hajipur in Criminal Appeal No.55 of 2018 arising out of Bhagwanpur P. S. Case No.130 of 2016 are hereby set aside. The petitioner is directed to 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 the learned Additional Sessions Judge-1st, Vaishali at Hajipur in connection with Criminal Appeal No.55 of 2018 arising out of Bhagwanpur P. S. Case No.130 of 2016, subject to condition that one of the sureties must be father of the petitioner, who shall give an undertaking before the trial Court that he shall keep strict vigil over the activities of the petitioner and shall produce him before the trial Court whenever and wherever is required by the trial Court.



14. In the aforesaid manner, this revision petition
stands disposed of.

(Hemant Kumar Srivastava, J)

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AFR/NAFR	A.F.R.
CAV DATE	N.A.
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