

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.5290 of 2019

Arising Out of PS. Case No.-21 Year-2019 Thana- MAHILA PS District- Buxar

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X9

... .. Appellant

Versus

The State Of Bihar

... .. Respondent

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Appearance :

For the Appellant/s : Dr. Kamal Deo Sharma, Adv.

For the Respondent/s : Mr. Sujit Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date: 15-10-2020

Heard learned counsel for the appellant and learned
counsel for the State.

2. Though the appellant has given full description in
the application, it would be inappropriate to disclose his identity
in view of the statutory provisions prescribed under Section 74
of the Juvenile Justice (Care and Protection of Children) Act,
2015 (for short ‘the Act of 2015’). He is being referred to in the
cause title as X9.

3. Registry while uploading the order on the website
shall also ensure that the cause title is reflected in similar
manner.

4. By way of the instant application preferred under
Section 101(5) of the Juvenile Justice (Care & Protection of
Children) Act, 2015, the appellant has challenged the order



dated 24.09.2019 passed in Child Case No. 6 of 2019 by the learned Special Judge-cum-1st Additional Sessions Judge, Buxar in Buxar (Mahila) P.S. Case No. 21 of 2019 registered under Section 376 of the Indian Penal Code and Section 4 of the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act').

5. The first information report has been registered on the basis of the written report submitted by mother of the victim wherein she has alleged that her daughter aged about 13 years had gone out to attend the call of nature at 08:00 p.m. in the night. Since she did not return for a long time, she stepped out of her house to trace her. She found her daughter near Brahmsthan in a precarious condition. On query, she informed that the appellant had ravished her.

6. The appellant was arrested on 10th of April, 2019. On the same day, he was produced before the court of Special Judge (POCSO), Buxar.

7. On the very next day i.e. 11.04.2019, the investigating officer produced the victim before the court of Special Judge (POCSO), Buxar and filed a petition for recording her statement under Section 164 of the Cr.P.C, which was allowed, whereafter the statement of the victim was recorded



under Section 164 of the Cr.P.C.

8. In her statement made under Section 164 of the Cr.P.C., the victim did not utter a word that she was ravished by the appellant rather she stated that on 08.04.2019, on the request of appellant, she had gone to meet him in the field. A co-villager saw them while they were talking together. On seeing the co-villager, the appellant fled away from the field. The said co-villager narrated to her mother about her meeting with the appellant in the field. Her mother took her back to home. She further stated that the appellant did not do anything wrong with her.

9. Subsequently, on 23.04.2019, a petition was filed on behalf of the appellant before the court of Special Judge (POCSO), Buxar claiming that on the date of occurrence, he was a juvenile.

10. During pendency of the application for declaring the appellant a juvenile, an application for bail was filed on behalf of the appellant before the court of Special Judge (POCSO), Buxar on 06.05.2019, which was adjourned to different dates. Even without disposing of the pending bail application, the learned Special Judge (POCSO), Buxar vide order dated 20.05.2019, sent the case of the appellant to the



Juvenile Justice Board, Buxar for examining his claim of juvenility.

11. Upon examination of testimonial produced by the appellant, the Juvenile Justice Board, Buxar determined the age of the appellant as 16 years 5 months and 29 days on 09.04.2019, the date on which occurrence had taken place. Accordingly, vide order dated 2.08.2019 passed by the Juvenile Justice Board, Buxar, the appellant was declared juvenile in conflict with law.

12. Subsequently, the Juvenile Justice Board, Buxar conducted preliminary assessment to assess the appellant's mental and physical ability to understand the consequences of the offence and the circumstances in which he had allegedly committed the offence.

13. After preliminary assessment made under Section 15 of the Act of 2015, the Juvenile Justice Board, Buxar determined that since the appellant had committed a heinous offence and he is above the age of 16 years but below the age of 18 years, his trial was fit to be transferred to the Children's Court. Accordingly, the Board transferred the entire record of the case to the court of Special Judge (POCSO), Buxar for trial of the appellant as an adult.



14. Upon receipt of the record, the Special Judge vide order dated 27.08.2019 took cognizance of the offence punishable under Section 376 of the Indian Penal Code and Section 4 of the POCSO Act.

15. Later on, learned Special Judge (POCSO), Buxar vide order dated 24.09.2019 rejected the application of the appellant for grant of bail.

16. A perusal of the impugned order dated 24.09.2019, would make it manifest that prayer for bail of the appellant has been rejected on the following grounds:

- (a) The Magistrate has assessed the age of the victim between 14 to 15 years;
- (b) Section 376 of the Indian Penal Code and Section 4 of the POCSO Act comes under the purview of heinous offence;
- (c) The police have filed charge-sheet against the appellant holding the allegation to be true;
- (d) The probation officer had expressed his apprehension that if the appellant would be released, he may be exposed to the bad elements of the society as he is running in the state of frustration having lust with opposite sex; and
- (e) The medical report primarily shows that there is possibility of sexual act with the victim.

17. The aforesaid grounds on which the trial court has



rejected the application for bail of the appellant would clearly show that seriousness of the offence alleged and filing of the charge-sheet against the appellant were the main considerations while passing the order. The trial court has completely overlooked the statement made by the victim under Section 164 of the Cr.P.C., which was recorded soon after the occurrence. The trial court has given undue importance to the medical report which only raises possibility of sexual act with the victim. The medical report was neither conclusive nor it indicated in any manner that the appellant was responsible for violating the modesty of the victim. The report of the Probation Officer in case of the appellant before the court below was not based on any reasoning. The same appears to be highly hypothetical.

18. A Division Bench of this Court in **Lalu Kumar & Ors. vs. The State of Bihar & Ors.** since reported in 2019(4) PLJR 833, has held that seriousness of the offence alleged cannot be made a ground for rejecting bail under the Act of 2015.

19. For the reasons recorded hereinabove, the order impugned passed by the court below cannot be sustained.

20. Accordingly, the impugned order dated 24.09.2019 passed in Child Case No. 6 of 2019 by the learned Special



Judge-cum-1st Additional Sessions Judge, Buxar in Buxar (Mahila) P.S. Case No. 21 of 2019, is set aside.

21. The appellant 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 learned Special Judge-cum-1st Additional Sessions Judge, Buxar in Buxar (Mahila) P.S. Case No. 21 of 2019.

22. The appeal stands allowed.

23. Since the court proceedings are being conducted through virtual mode and normal court functioning has not been restored till date, it is considered appropriate to adopt the following procedure for communication of the present judgment:-

- (i) The judgment, which has been dictated during the course of proceeding of the virtual court, shall be communicated to me on my e-mail by the Sr. Secretary.
- (ii) The corrected copy of the judgment shall be transmitted by me from my e-mail id to the Sr. Secretary, which shall be treated to be an authentic copy of the judgment passed by this Court in the present proceeding.



- (iii) Hard copy of the judgment duly signed by me shall be preserved in my residential office for documentation and future use, if any.
- (iv) Let a copy of the judgment be sent to Dr. Kamal Deo Sharma, learned counsel for the appellant also on his e-mail.
- (v) Let steps be taken by the Sr. Secretary/registry for uploading of the present judgment without compromising with the norms of social distancing.

(Ashwani Kumar Singh, J)

rohit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16-10-2020
Transmission Date	16-10-2020

