

**IN THE HIGH COURT OF JUDICATURE AT PATNA
(FROM RESIDENTIAL OFFICE VIA VIDEO APPLICATION)
CRIMINAL APPEAL (SJ) No.2275 of 2021**

**In
CRIMINAL REVISION No.402 of 2020**

Arising Out of PS. Case No.-1 Year-2020 Thana- MAHILA P.S. District- Munger

Mayank Kumar @ Mayank Kumar Mehta S/o Ranjeet Mehta @ Ranjeet Kumar Mehta through his father and natural guardian, Ranjeet Mehta @ Ranjeet Kumar Mehta, male, aged about 58 year S/o Jagdish Mehta, R/o Mohalla Purab Sarai, Durgasthan, P.S.- Kotwali, District- Munger.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellant/s : Mr.Patanjali Rishi, Advocate
For the Respondent/s : Mr.Usha Kumari-1, Spl. P.P.

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER**

5 27-07-2021 Heard learned counsel for the appellant and Ms. Usha Kumar-1, learned Spl.P.P.

The present application has been filed under Section 101(5) of the Juvenile Justice (Care and Protection of Children) Act 2015 (hereinafter referred to as ‘Juvenile Justice Act’) seeking setting aside of the order dated 04.06.2020 passed by learned Special Judge Children Court, Munger in JJB Case No. 23 of 2020 arising out of Mahilla P.S. Case No. 01.2020.

As per the prosecution story, the victim girl aged about 14 years is a neighbour of the appellant. On 02.01.2020 at about 09:00 P.M. the appellant induced her in the name of giving a watch and called her in his house, when she went there, he took her to a room in his old house and committed rape upon her and then made her to

cross the wall outside that room and told her to go to her room. The victim girl disclosed this to her parents on 03.01.2020.

Learned counsel for the appellant submits that in her 164 Cr.P.C. statement recorded on 04.01.2020 the victim girl has deviated about the manner of occurrence. She alleged that when she went out of her house to bring water and after bringing water when she was standing at her gate, the appellant signaled her to come to give her a watch. The victim girl went to take the watch whereupon the appellant allegedly pressed her mouth took off her clothes and committed rape on her.

When the mother of the informant started to look for her, he made her to cross the roof after which the informant went to her house but did not tell anything to her mother.

It is further submitted that the Medical Board held on 04.01.2020 found no sign of sexual assault upon the victim girl.

Learned counsel submits that this appellant has been adjudged a juvenile aged 16 years 6 months approximately. The victim girl has been found between 16-17 years in the medical examination report, thus, both the appellant as well as victim girl are almost of the same age and the manner of occurrence as alleged shows that no force was applied by this appellant against the victim girl, on the alleged date of occurrence she had crossed the roof as per her own statement, went to her house but did not disclose the occurrence to her family which was not possible had it been a case of

any forceful commission of the act as alleged.

Learned counsel submits that the appellant has been falsely implicated in this case, he surrendered on his own, on 31.01.2020, therefore, he is in the observation home for one year six months but the trial has not yet begun as no witness has turned up till date.

Referring to the social investigation report, which is available on the record, learned counsel has given much emphasis on the spirit of Section 12 of the Juvenile Justice Act and submits that the social investigation report in the present case is something which is normally not available in all the case of the juveniles. It is an exceptional kind of report wherein this fact has come through the mouth of the neighbours and the villagers that this appellant is a disciplined boy, he was going to appear in the matriculation examination scheduled in the year 2020 but because of this case he could not appear in the said examination, he was a student of Model High School, Munger and his most of the friends are educated and from the same age group, his behaviour is friendly and the neighbours some of whom are lady members of the neighbourhood have informed that this boy is having disciplined behaviour and has got interest in study.

His family got him surrendered in this case and the Probation Officer has further recorded as regards the background of the allegation that most of the neighbours and friends of the appellant

claim that this appellant is not involved in the alleged occurrence.

Learned counsel has further pointed out that the Probation Officer has found in course of local inspection that the boy and the victim girl both were known to each other and they were playing together in the field in front of their house. According to the mother of the boy he was studying on the said date also, some dispute on petty matters were taking place between the two families and according to the information of the Probation Officer the allegation is baseless. He has recorded further that most of the neighbours who are named in the report have stated that the allegations are false and in past also such allegations were made by the informant against some persons. They have also stated that there is no danger to the society if the boy returns home and on his return he would be made to appear in matriculation examination and will be sent to Patna with his maternal uncle where he would continue with his study.

Ms. Usha Kumari-1, learned Special P.P. has appeared and opposed the prayer for bail of the appellant but accepts that social investigation report of the appellant in this case is exceptional.

Considering the facts and circumstances of the case, no doubt this Court finds that there is an allegation of rape against the appellant but at the same time this Court has noticed that the victim girl and this appellant are from the same age group and the local inspection by the Probation Officer has disclosed that they were friendly to each other and were playing together, the victim girl has

herself stated that when her mother was looking for her she was made to cross-over the roof, she went her home but did not disclose anything to her mother, on the next day she is said to have disclosed it to her mother, the medical report does not indicate sign of rape, the neighbours in the village have disclosed that the boy is having disciplined behaviour and has keen interest in study. In fact he was to appear in the matriculation examination in the year 2020, the appellant has remained in observation home for one and half year but the trial has yet not concluded, the further incarceration of the appellant is likely to result in his missing years of studies and this Court is concerned about that particularly after going through the social investigation report in which all the neighbours whose names are mentioned in the report have stated that the allegations against the appellant are false and such allegations have been made by the informant in past against others. There is no danger to the society if the appellant returns to home and then there is a statement further recorded by the Probation Officer that his family would keep him at Patna for further studies, this Court is of the considered opinion at this stage that the best interest of the juvenile requires his reunion with the family rather than institutional stay in the observation home so that he may continue with his study and keep himself attached to the mainstream of the society, this Court, therefore, sets aside the impugned order and directs release of the appellant above named on bail on furnishing of bail bonds of Rs.25,000/- (Rupees Twenty Five

Thousand Only) with two sureties of the like amount each to the satisfaction of learned Special Judge, Children Court, Munger in connection with JJB Case No. 23 of 2020 arising out of Mahila P.S. Case No. 01 of 2020 with condition that one of the bailors would be the father of the appellant.

And further condition that after release from the observation home, the appellant shall not come in contact with the victim girl and the father of the appellant shall give an undertaking that after release on bail the appellant shall not be allowed to come in contact with any bad element rather he will take care of his study and will keep him engaged in the studies at Patna or elsewhere according to his own wisdom.

The Probation Officer shall keep visiting the place of the appellant and submit the periodical reports to the Juvenile Justice Board, Munger.

This appeal is, thus, allowed.

(Rajeev Ranjan Prasad, J)

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Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.