

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.383 of 2020

Arising Out of PS. Case No.-17 Year-2019 Thana- MANSURCHAK District- Begusarai

SUNNY KUMAR SAH @ SUNNY SAH @ SUNNY KUMAR S/o
Visheshwar Sah R/o Ward No.13, Village- Samsa, P.S.- Mansoor Chak,
District- Begusarai, Under Guardianship of his mother Fulo Devi @ Kulo
Devi, W/o Visheshwar Sah, Ward No.13 R/o Village- Samsa, P.S.- Mansoor
Chak, District- Begusarai.

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Jai Prakash Singh
For the Respondent/s : Mr.Uday Pratap Singh, APP

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL ORDER

2 19-08-2021 This matter is taken up for consideration through
Video Conferencing.

Heard counsel for the petitioner and the State.

Instant criminal revision application is directed
against the judgment/order dated 14.02.2020 passed by learned
Ist Additional District & Sessions Judge, Begusarai in Criminal
Appeal No. 05 of 2020 as well as judgment/order dated
17.12.2019 passed by Principal Magistrate Juvenile Justice
Board, Begusarai in connection with Mansurchak PS Case No.
17 of 2019, (JJB No. 70/2019) registered for the offence under
Section 376D of the Indian Penal Code, sections 4, 5, 6 and 12
of the POCSO Act and section 67 of the IT Act by which prayer



for bail of the petitioner has been rejected.

As per the prosecution case, on 11.02.2019 at 6.30 pm in the evening, while the informant had gone to attend the call of nature, six accused persons including the petitioner named in the FIR took her in the field and co-accused Aman Kumar Sah, Sujeet Thakur and Raviya Malakar committed rape with her and this appellant is alleged to have taken her nude photograph.

It is submitted on behalf of learned counsel for petitioner that petitioner has been declared juvenile by the Juvenile Justice Board vide order dated 12.06.2019 as on the alleged date of occurrence, he was 13 years 9 months and 23 days. It is further submitted that Juvenile Justice Board as well as lower Court have rejected the bail application of the petitioner only considering the merit and nature of allegation which is not in consonance with the mandate of law. Case of juvenile is to be considered on the criteria laid down under Section 12 of of the Juvenile Justice Board Act. It is further submitted that social investigation report is based on conjectures and surmises and without any material. Petitioner has got clean antecedent and he is in custody since 25.02.2019.

Counsel for the State vehemently opposed the prayer for bail.



From perusal of provisions of sections 12 of the Juvenile Justice (Care and Protection of Children) Act, it is evident that the Juvenile Justice Board as well as the Appellate Court are required to look into aspects which may be relevant with reference to three grounds, namely, likelihood of association with criminals, likelihood of moral, physical or psychological danger and likelihood to defeat ends of justice, rather than searching into merits of the case or nature and gravity of allegation. In this case, without there being such finding or report of social investigation, only nature and gravity of offence has been taken into consideration while considering bail application of this appellant which is contrary to statutory mandate of Section 12 of Juvenile Justice Act, Interest of children is paramount consideration in such cases. From perusal of the impugned order it appears that the findings has been recorded that if the appellant is released on bail, the chances of his mixing with known criminals and apprehension of his physical, moral and mental danger cannot be ruled out. But the same finding has been recorded without there being any material on the record. Similarly situated co-accused has already been allowed bail by a co-ordinate bench of this Court vide order passed in Cr. Revision No. 56 of 2020.



Considering the aforesaid facts, this revision application is allowed. The order dated 14.02.2020 passed by learned Ist Additional District & Sessions Judge, Begusarai in Criminal Appeal No. 05 of 2020 and order dated 17.12.2019 passed by Principal Magistrate Juvenile Justice Board, Begusarai in connection with Mansurchak PS Case No. 17 of 2019, (JJB No. 70/2019), is set aside.

Let the petitioner above-named, 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 Principal Magistrate, Juvenile Justice Board, Begusarai in Criminal Appeal No. 05 of 2020 arising out of Mansurchak PS Case No. 17 of 2019 (JJB No. 70/2019) with further condition that the parent or guardian of the petitioner shall file an affidavit for the good behaviour and child's well being for a period of one year.

(Prabhat Kumar Singh, J)

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