

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1256 of 2019

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

CHHOTUA MALAKAR @ SUSHIL KUMAR @ CHHOTU Son of Ram Balak Malakar @ Rambaka Malkar Resident of Village-Ward No.13 Samsa, P.S.-Mansurchak, District-Begusarai, under guardianship of his father Ram Balak Malakar @ Rambaka Malkar S/o Kailash Malakar, Resident of Village Ward No.13 Samsa, P.S.-Mansurchak, District-Begusarai.

... .. Petitioner

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Jai Prakash Singh, Advocate
For the Respondent/s	:	Mr.Aditya Narayan Singh-I, APP
For the Informant	:	Mr. Radha Mohan Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

3 15-04-2021 . In view of sudden surge of COVID – 19 infection there is limited functioning of the High Court and therefore the matter has been listed for consideration through virtual mode.

Heard learned counsel for the petitioner and the learned counsel for the State as also the learned counsel appearing for the informant.

This revision application is directed against the order dated 09.08.2019 passed by learned District & Session Judge, Begusarai in Criminal Appeal No. 92 of 2019 as well as judgment and order dated 04.07.2019 passed by Principal Magistrate, Juvenile Justice Board, Begusarai in Mansurchak P.S. Case No. 17 of 2019, G. R No. 145 of 2019, J.J.B Case no. 70 of 2019 for the offences punishable under section 376 D of the Indian Penal Code and under section 4,5,6,12 of the POCSO Act and under section 76,67 of the I.T Act.

Altogether six persons, including the petitioner, have taken away the informant's minor girl and it is alleged that they have committed rape. The petitioner is alleged to have caught hold of the



victim while rape was being committed.

Learned counsel for the petitioner submits that the petitioner at the time of alleged occurrence was aged 15 years 5 months and 22 days. He therefore, has been declared a juvenile by order dated 12.06.2019 passed by learned Juvenile Justice Board, Begusarai. It is submitted that the petitioner at best is accused of catching hold of the victim and allegation of rape is attributed against co-accused Raman Kumar Sah, Sujit Thakur and Raviya Malakar. It is also submitted that the medical report (Annexure-2) does not corroborate allegation of rape having been committed. The petitioner being a juvenile has been in custody since 24.02.2019.

Learned counsel for the informant as well as learned App for the State have opposed the prayer for bail. It is submitted that rape has been committed by six persons. Petitioner is named accused and the victim is a minor girl.

This court would consider it appropriate to take note of the submissions in the back drop of the petitioner being a juvenile below 16 years at the time of alleged occurrence.

In view of settled position emanating from the Juvenile Justice (Care and Protection of Children) Act 2015, (hereinafter referred to as 'the Act'), specially section 12 thereof, the petitioner is entitled to grant of bail on the ground of being a juvenile unless and until the conditions contemplated in the proviso to section 12(1) are fulfilled, which may necessitate the petitioner to be further detained for the reasons specified in the proviso. The Act is very clear that release on bail can only be refused if such released is likely to bring the child in conflict with law in association with any known criminal, or that his release is likely to expose him to moral, physical and physiological danger. Release may also be refused if there are reasonable ground to believe that his release would defeat the ends of justice. The Juvenile Justice Board while rejecting the petitioners prayer for release on bail has not recorded any finding



regarding existence of either of the three condition/s precedent contemplated in the proviso to Section 12(1) of the Act.

In the above view of the matter, order of the Juvenile Justice Board dated 04.07.2019 and the order dated 09.08.2019 passed by the Session Judge rejecting petitioners prayer for bail, merely for the fact that he is an accused of heinous offence, is clearly unsustainable in the eye of law.

Having considered the submissions, facts and circumstances, relevant provisions of the Act and also the fact that the petitioner has been in custody for more than two years, let the above named petitioner, a juvenile, be released on bail on his furnishing bail bond of Rs. 10,000/- (Ten Thousand) with two sureties of the like amount each to the satisfaction of the learned District & Session Judge, Begusrai, in connection with Cr. Appeal No. 92 of 2019 arising out of Mansurchak P.S. Case No. 17 of 2019, in favour of his father, who shall keep him under his guardianship and produce him as and when required and also subject to the condition that one of the bailors of the petitioner shall be his father who at the time of filing of the bonds, shall also give and undertaking that he will take proper care of the petitioner and in case the petitioner does not act as per his advice, he shall report the matter to the officer-in-charge of the concerned police station and further during the period of bail, the petitioner will be under the supervision of concerned probation officer.

In the result, the revision application is allowed and the impugned orders dated 09.08.2019 and 04.07.2019 are set aside.

(Madhuresh Prasad, J)

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