

**IN THE HIGH COURT OF JUDICATURE AT PATNA
(FROM RESIDENTIAL OFFICE VIA VIDEO APPLICATION)
CRIMINAL REVISION No.6 of 2020**

Arising Out of PS. Case No.-75 Year-2019 Thana- KHAJAULI District- Madhubani

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BABLU KUMAR MANDAL @ BABLU MANDAL Through his Natural Guardian and Father namely Ram Lakhan Aged about-55 years, Gender Male, Son of Sonai Mandal. Both Resident of Village - Inrava, P.S.- Khajauli, District- Madhubani

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Ravindra Kumar Singh, Adv.
For the Respondent/s	:	Mr.Uday Pratap Singh, APP
For the Informant	:	Mr. Sanjiv Kumar, Adv.

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

5 06-09-2021 Heard learned counsel for the petitioner, learned counsel for the informant and learned A.P.P. for the State.

Petitioner in the present case is seeking setting aside of the order dated 26.11.2019 passed in T.R.No.02/2019 by learned 1st Additional Sessions Judge-cum-Special Judge, POCSO Act, Madhubani (G.R.No.845/2019/EN 913 of 2019) in connection with Khajauli P.S. Case No.75/2019 registered for the offences punishable under Sections 364 and 302/34 of the Indian Penal Code. He is in the observation in connection with this case since 01.06.2019.

As per the prosecution story, the daughter of the informant had gone to ease out, she was about 17 years old.

After leaving her house at 7.30 pm on 20.05.2019 she did not return home. The informant claims to have made telephone call on her mobile number whereupon the daughter of the informant told him that she is at the canal (Nahar) and “they will kill her” and thereafter she disconnected the phone. The informant claims that for the whole night he remained in search of his daughter but she could not be found. On 21.05.2019, he reached to his village and in the morning at 6.00 am he got information from the co-villagers that dead body of his daughter is hanging from a tree near the Pokhar of one Anil Singh. The informant went there with the co-villagers and found the dead body of his daughter was hanging from a rope with the help of a tree. He raised suspicion against unknown persons and on that basis the FIR has been registered.

Learned counsel for the petitioner submits that in course of investigation co-accused Sanjay Yadav was arrested and in his confessional statement the name of the petitioner and other co-accused transpired. The petitioner has been adjudged juvenile by the learned Juvenile Justice Board.

Learned counsel for the petitioner submits that in course of investigation it was found that the victim girl was regularly talking to the co-accused Nand Kishore Yadav and

several phone calls were made by her to Nand Kishore Yadav on the date of the occurrence also.

Learned counsel further submits that the petitioner has been brought in this case on the basis of the CDR analysis of the phone calls of Nand Kishore Yadav from which it has been found that the petitioner had talked to the main accused Nand Kishore Yadav soon after the occurrence.

Learned APP, however, submits that the I.O. has not taken the tower location of the mobile of the petitioner and the victim girl and no comparison has been made to find out as to whether the mobile location of the petitioner was the same as that of the mobile location of the victim girl.

Learned counsel submits that the prayer for bail of the petitioner remained pending for a long time before the Juvenile Justice Board, Madhubani and no social investigation report was called for during this period. The petitioner has remained in remand home since his apprehension, though he was released for some time during Covid-19 situation. Presently the petitioner is in the remand home.

Learned counsel further submits that the co-accused Nand Kishore Yadav who is said to be the main accused has been granted bail by a learned coordinate Bench of this Court in

Cr.Misc.No.25085/2021, Sanjay Yadav has been granted bail in Cr.Misc.No.29233/2020 and co-accused Santosh Yadav has been granted bail in Cr.Misc.No.18773/2020.

It is further submitted that the father of the petitioner who has got no criminal antecedent is ready to furnish an undertaking that if released on bail the petitioner shall not be allowed to come in contact with any bad element and if he comes in such contact he will personally report it to the nearest police station. Petitioner is said to be a student of intermediate class and on release from the remand home he will pursue his studies.

On the other hand, Mr. Uday Pratap Singh, learned APP for the State and learned counsel for the informant have opposed the prayer for bail of the petitioner. In course of answering the query of this Court, learned APP accepts that no investigation has been made on the point as to whether this petitioner was present on the place of occurrence. The tower locations of the mobile of the petitioner has not been obtained and there is no witness on the point that the petitioner was seen with the victim girl save and except the statement of a spy that the victim girl was seen with the co-accused Nand Kishore Yadav, Santosh Yadav and this petitioner. The statement of the

spy has been recorded in the case diary on 22.05.2019. The main accused Nand Kishore Yadav and co-accused Santosh Yadav have already been granted bail.

Considering the facts and circumstances of the case, the petitioner is admittedly a juvenile on the alleged date of occurrence, so far as the allegations on merit is concerned, the only thing which has been pointed against him is that he had talked to Nand Kishore Yadav after the alleged occurrence, co-accused Nand Kishore Yadav, Santosh Yadav and Sanjay Yadav have been granted bail, so far as the principles of *parens patriae* is concerned, this Court finds that this petitioner has got no criminal antecedent, he is a student of intermediate class and his father who has otherwise no criminal antecedent as informed to this Court, is ready to furnish undertaking that if released on bail, the petitioner shall be associated with the study and shall not be allowed to come in contact with any bad element, thus this Court is of the considered opinion that the reunion of the petitioner with his family would be in his best interest, thus, this Court sets aside the impugned order and directs release of the petitioner on bail on furnishing bail bond of Rs. 25,000/- (Rupees Twenty Five Thousand only) with two sureties of the like amount each to the satisfaction of learned 1st Additional

Sessions Judge-cum-Special Judge, POCSO Act, Madhubani in connection with Khajauli P.S. Case No.75 of 2019. One of the bailors should be the father of the petitioner and he will also furnish an undertaking as recorded hereinabove in the submission part.

The Probation Officer shall keep on visiting the place of the petitioner and shall submit periodical report to the Juvenile Justice Board, Madhubani as regards the conduct of the petitioner.

Lastly this Court finds that pursuant to the last order, the learned Juvenile Justice Board, Madhubani has submitted a report. It is admitted that the bail petition dated 06.07.2019 was filed in the Juvenile Justice Board, but no social investigation report has been called for by the Board. A plea has been taken that such report is generally called for at the stage of deciding the bail petition but in this case because bail petition was never pressed, no social investigation report was called for by the Juvenile Justice Board prior to transfer of the record to the court of learned ADJ-I-cum-Children Court.

This Court is of the considered opinion that the kind of explanation furnished to this Court is nothing but a mere pretext to come out of the laches on the part of the Juvenile

Justice Board, Madhubani. The Juvenile Justice Board has some functions and responsibilities towards the children who are either in conflict with law or in need of care and protection. The Board cannot simply be allowed to take a plea that they did not consider the bail petition because it was not pressed.

It was expected from the Board that such bail petition should have been taken up by fixing a date and if no lawyer was appearing on behalf of the petitioner, appropriate notice should have been issued to the parent/guardian of the petitioner whereupon he/they could have taken steps to get the bail petition pressed. It was open for the Board to consider such bail petition by appointing a lawyer through the District level Legal Services authority. This should have also been brought to the notice of the Secretary, District Legal Services Authority but as it appears nothing was done by the Juvenile Justice Board, Madhubani. The Board did not call for a social investigation report which is another laches on the part of the court. The plea that such report is generally called for at the stage of deciding of the bail petition is not acceptable to this Court.

In terms of Section 8(3)(e) of the Juvenile Justice (Care and Protection of Children) Act, 2015 the Board was obliged to call for the social investigation report. A direction was required to the Probation Officer or the Child Welfare Officer or a Social

Worker to undertake the social investigation into the case and to submit a report within a period of 15 days from the date of first production before the Board. Hence in such matters the Board cannot offer any justification for not calling the social investigation report of the juvenile for such a long time.

This Court is though accepting the apology pleaded in the report dated 27.08.2021 submitted under the signature of Sri Maheshwar Dubey, ACJM-cum-Sub Judge-cum-Principal Magistrate, JJB, Madhubani, but the Court puts a word of ‘caution’ that henceforth the Board should be vigilant in safeguarding the interest of the juveniles and always remember that their role is akin to the role of the parents of the juvenile.

This application stands disposed of accordingly.

Let a copy of this order be sent to the Juvenile Justice Secretariat of the Patna High Court for information and placing the same before the Hon’ble Committee to consider issuing necessary instruction as may be deemed just and proper to the Juvenile Justice Boards across the State of Bihar.

(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’.