

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.312 of 2022

Arising Out of PS. Case No.-34 Year-2021 Thana- MAHILA PS District- Aurangabad

XXX Son of Anil Ram Resident of Village - Phulwariya, Post- War, Police
Station- Madanpur, District - Aurangabad.

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Akhilesh Kumar Sinha, Adv.

For the Respondent/s : Mr.Brajendra Nath Pandey, APP

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

3 30-09-2022 Heard learned counsel for the petitioner and Mr. B.N.
Pandey, learned APP for the State.

Petitioner in the present case is seeking setting aside of the order dated 23.02.2022 passed in Criminal Appeal No4/22/3/22 by the learned 1st Additional District and Sessions Judge, Children Court, Aurangabad by which the learned Sessions Judge has been pleased to affirm the order dated 06.01.2022 passed by the learned Juvenile Justice Board, Aurangabad in CIS No.4/22 arising out of Mahila P.S. Case No.34 of 2021 registered for the offences under Sections 363, 376(B)/34 of the Indian Penal Code whereby and whereunder the prayer for bail of the petitioner has been rejected.

Learned counsel for the petitioner submits that as per allegations, on 16.10.2021 at about 12.30 pm when the victim



girl was going to meet her friend in the neighbourhood, main accused namely Rahul Kumar @ Bittu Kumar of her village forcefully took her in his vehicle and committed rape with her. It is alleged that when she became conscious she was suffering from pain and petitioner and co-accused were present there. It is alleged that she was intercepted by Muffasil police station and was taken to the police station where her family members were called and thereafter the present FIR was lodged.

Learned counsel for the petitioner submits that this petitioner has been adjudged juvenile aged about 17 years 5 months on the alleged date of occurrence. He has been falsely implicated in this case only because he happened to be the brother of the main accused Rahul Kumar @ Bittu Kumar. It is submitted that the petitioner has no criminal antecedent.

Learned counsel further submits that the informant has not made any specific allegation of commission of rape against this petitioner. She has, in course of trial, deposed and in her examination-in-chief she has specifically stated in paragraph '2' that she was taken to a room by the co-accused Rahul Kumar @ Bittu Kumar on a motorcycle and it was Rahul who was with her in the room and had allegedly committed wrong act. Only thereafter it is alleged that Rahul Kumar @ Bittu Kumar took



her phone and called his cousin brothers who started pressurizing the informant to marry Rahul Kumar @ Bittu Kumar. She was sitting with Rahul only when the auto was intercepted by the police.

Learned counsel for the petitioner submits that she has specifically stated further that when she was sitting in Auto with Rahul Kumar then this petitioner and the co-accused had come from their house. It is thus his submission that there is neither any allegation that this petitioner was present in the room or that he had committed any wrong act with the victim girl.

Learned counsel further submits that in fact in course of investigation it has transpired that the victim girl who was major and has been found aged between 18-20 years in her medical examination was having an affair with Rahul Kumar @ Bittu Kumar and they had some consented relationship which were opposed by her family and thereafter, it is submitted that the case was lodged when the family members of the victim girl were informed by the police who had intercepted them going in an auto with an intention to marry her.

Learned counsel further submits that this petitioner has passed his 12th examination and has been doing nursing course from Jaipur. The social investigation report of the



petitioner does not show any adverse material against him.

Learned counsel submits that the father of the petitioner is ready to stand as a surety and furnish an undertaking that if released on bail he will take care of the study of the petitioner and shall ensure that he does not fall in bad company and in case the petitioner indulges in any unlawful act, he will inform it to the jurisdictional police station.

Mr. B.N. Pandey, learned APP for the State has though opposed the prayer for bail of the petitioner but at the same time clearly submitted before this Court that there is no specific material against this petitioner. His social investigation report does not report any adverse material, there is no complaint against him and he has a bright career in studies.

In the given facts and circumstances, in the nature of the materials present on the record, particularly the deposition of the victim girl as contained in Annexure-A to the supplementary affidavit filed on behalf of the petitioner, as also finding that the petitioner has been doing nursing course from Jaipur and the social investigation report does not disclose any adverse material against the petitioner, his father is ready to stand as a surety and furnish an undertaking that if released on bail he will take care of the study of the petitioner and shall ensure that he



does not fall in bad company and in case the petitioner indulges in any unlawful act, he will inform it to the jurisdictional police station as also following the spirit of section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015 and in view of the exceptions carved out by the Hon'ble Division Bench of this Court in the case of **Lalu Kumar and Ors. Vs. The State of Bihar reported in 2019 (4) PLJR 833** that classification of the offences under the bailable and non-bailable sections would not be relevant for purpose of grant of bail to a juvenile and the prayer for bail of a juvenile may be rejected only under one of the three conditions as under:-

- “(i) The release is likely to bring that person into association with any known criminal;
- (ii) The release is likely to expose the said person to moral or physiological danger; and
- (iii) The release would defeat the ends of justice.”

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 Juvenile Justice Board, Aurangabad in connection with CIS No.4/22 arising out of Mahila P.S. Case No.34 of 2021.

One of the sureties should be the father of the petitioner and he will also furnish an undertaking that if released



on bail, the petitioner shall not be allowed to come in contact of any bad element and in case the petitioner indulges in any unlawful act, he will inform it to the jurisdictional police station.

The Probation Officer shall keep on visiting the place of the petitioner and shall submit periodical report to the Juvenile Justice Board, Aurangabad as regards the conduct of the petitioner. If anything adverse is found against the petitioner, the same will also be reported to the Board for necessary action.

And further condition that the court below shall verify the criminal antecedent of the petitioner and in case at any stage it is found that the petitioner has concealed his criminal antecedent, the court below shall take step for cancellation of bail bond of the petitioner. However, the acceptance of bail bonds in terms of the above-mentioned order shall not be delayed for purpose of or in the name of verification.

(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'.

