

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.366 of 2022

Arising Out of PS. Case No.-66 Year-2021 Thana- MAHILA PS District- Buxar

XXX Son Of Vinod Rai @ Satendra Rai R/O Village- Darahpur, P.S.- Buxar (Ind.), District- Buxar. Vinod Rai @ Satendra Rai Aged About 52 Years (M) S/O- Kashi Nath Rai, He Is The Guardianship (Father) Of Petitioner Anish Rai R/O Vill.- Darahpur, P.S.- Buxar (Ind.), District- Buxar

... .. Petitioner

Versus

1. The State of Bihar
2. The Superintendent of Police, Buxar
3. The Superintendent, Central Jail, Buxar

... .. Opposite Parties

Appearance :

For the Petitioner	:	Mr. Dr. Kamal Deo Sharma, Advocate
For the State	:	Mr. Rana Randhir Singh, APP
For the Informant	:	Mr. Arvind Kumar Pradhan, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

7 06-12-2022 Heard learned counsel for the petitioner, learned counsel for the informant and Mr. Rana Randhir Singh, learned APP for the State.

Petitioner in the present case is seeking setting aside of the judgment and order dated 13.04.2022 passed by learned Additional Sessions Judge 1st -cum- Special Judge (SC/ST & Children Court), Buxar in Criminal Appeal No. 12 of 2022 whereby and whereunder the order dated 14.03.2022 rejecting the prayer for bail of the petitioner passed by learned Juvenile Justice Board, Buxar in J.J.B. Case No. 712 of 2021 arising out of Buxar (Mahila) P.S. Case No. 66 of 2021 registered for the offences under Sections 341, 323, 506, 376(D) of the Indian Penal Code and Section 4 and 6 of the Prevention of Children from Sexual



Offences Act (in short 'POCSO Act') has been affirmed.

Learned counsel for the petitioner submits that as per the prosecution story, the victim girl was returning from her tuition at about 9.00 AM when accused Ravi Rai and the petitioner approached the victim and threatened her to take selfie otherwise her brother will be killed. It is alleged that she was taken to a bush where the said Ravi Rai and this petitioner committed rape on her one after another, they video-graphed the entire occurrence and threatened the victim of dire consequences if this is disclosed to anyone. It is alleged that again on 16.08.2021 both the accused tried to call the victim and only thereafter the victim disclosed the entire occurrence to her family members. Thereafter the present FIR was lodged.

Learned counsel submits that the FIR has been lodged after one month of the alleged occurrence. There is no eye-witness to the same. It is submitted that the medical examination report does not suggest commission of penetrative sexual assault upon the victim girl.

Learned counsel for the petitioner further submits that in paragraph '70' of the case diary, the confessional statement of the petitioner has been extracted wherein it has come that the victim girl was in touch with Ravi Rai and she was regularly meeting with him. The petitioner has denied his involvement in the



alleged occurrence. Learned counsel further submits that this petitioner is below 16 years of age and the Juvenile Justice Board has declared his age as 15 years 3 months 3 days which is not under challenge. It is, thus, submitted that considering his protective custody of about one year three months and fifteen days by now, the petitioner may be released on bail on such terms and conditions as this Court may deem just and proper in the facts and circumstances of the case. His father is ready to stand as a surety and furnish an undertaking that if released on bail he would not allow the petitioner to come in contact with the victim girl and will keep him away from the village in which the victim girl would be residing so long as the case is not finally concluded. In case, the petitioner indulges in commission of any crime, the same will be reported to the jurisdictional police station.

Learned counsel has further relied upon the judgment of the Hon'ble Division Bench of this Court in the case of **Lalu Kumar and Ors. versus The State of Bihar** reported in **2019 (4) PLJR 833**.

On the other hand, learned counsel for the informant and learned APP for the State have opposed the prayer for bail of the petitioner. They jointly submit that the petitioner is one of the accused who is said to have been involved in commission of rape. The medical report has been incorporated in paragraph '87' of the



case diary and the doctors have opined that there is no external injury evident and there is no evident injury over the private parts.

Learned counsel for the informant has pointed out towards the opinion recorded by the doctor wherein it is stated that “there may be sexual act in past and no evidence of repeated sexual act....”. As regards the allegation that the occurrence was video-graphed and made viral, learned APP has after going through the case diary submitted that in that connection there was no seizure of mobile phone or video recorder and on that aspect, no material is available in the case diary.

Having regard to the entire facts and circumstances of the case, considering that the petitioner is below 16 years of age and he has already remained in protective custody for almost one year three months and fifteen days by now, his father is ready to stand as surety and furnish an undertaking to the effect that if released on bail he would not allow the petitioner to stay in the village in which the victim girl would be residing and he would ensure that this petitioner does not come in contact with the victim girl in course of enquiry, 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. versus 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 physiology danger; and
- (iii) The release would defeat the ends of justice.”

this Court sets aside the impugned order and directs release of the petitioner above named 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, Buxar in connection with Buxar (Mahila) P.S. Case No. 66 of 2021.

One of the sureties shall be the father of the petitioner and he will also furnish an undertaking that if released on bail, he would not allow the petitioner to stay in the village in which the victim girl would be residing and he would ensure that this petitioner does not come in contact with the victim girl in course of enquiry 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, Buxar 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.

This application stands disposed of accordingly.

Let the interlocutory application filed in the Court be taken on the record. Office is directed to place number on it.

Vide order dated 02.12.2022, this Court has called for explanations from Superintendent of Police, Buxar as well as Superintendent, Central Jail, Buxar who have been added as O.P. Nos. 2 and 3 in the present case.

Let this matter be listed for the purpose of consideration of the interlocutory application after three weeks i.e. on 5th January, 2023 with the reports and the response of O.P. Nos. 2 and 3.

(Rajeev Ranjan Prasad, J)

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