

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.453 of 2021**

Arising Out of PS. Case No.-82 Year-2017 Thana- MAHILA P.S. District- Patna

=====

Aman Kumar @ Satyam Kumar Aanu, Son of Sanjeev Kumar Gupta,
Resident of Annie Besant Road opposite Patna College, Mohalla Purandarpur,
P.S. Pirbahore, District - Patna.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Alka Kumari, Daughter of Sri Satyadeo Prasad, Resident of Mohalla -
Nasariganj Digha, P.S.- Danapur, Dist.- Patna

... .. Opposite Party/s

=====

Appearance :

For the Petitioner/s	:	Mr.Rajesh Ranjan, Adv. Ms. Maria Nazir, Adv.
For the O.P.No.1	:	Mr.Akhileshwar Dayal, APP
For the O.P.No.2	:	Mr.Bishwajeet Pandey, Adv.

=====

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

3 21-07-2022 Learned counsel for the petitioner undertakes to remove all the defects, as pointed out by the office, within two weeks from today.

Heard learned counsel for the petitioner and learned counsel for the opposite party no.2. As usual the learned advocate who has been assigned the brief on behalf of the State is not present and on the request of this Court Mr. Akhileshwar Dayal, learned APP has represented the State.

Petitioner in the present case is aggrieved by and dissatisfied with the order dated 08.04.2021 passed in Spl. Case (POCSO) No.167 of 2017/C.I.S. No.167 of 2017 arising out of Mahila P.S. Case No.82 of 2017 by which the learned 6th Additional Sessions Judge-cum-Spl. Court POCSO, Patna has



refused to consider the claim of juvenility of the petitioner in the light of the materials which have come in course of trial in form of the deposition of the victim girl.

Learned counsel submits that admittedly the date of birth of the petitioner mentioned in his matriculation certificate is 03.10.1999. The allegation against him is that while staying in the house of his *Mausi* for purpose of studies, he committed rape on her *Mauseri* sister. The victim alleged that the rape was committed regularly.

Learned counsel for the petitioner submits that on a bare perusal of the First Information Report it will appear that the victim has alleged that about one year ago the petitioner had established relationship with her by threatening her and thereafter he continued with the said relationship on the pretext of marriage. It is submitted that the FIR has been lodged on 18.11.2017 and the alleged occurrence is as per the FIR that of the year 2016. In the year 2016, the petitioner was a juvenile.

It is his further submission that in the FIR there is no disclosure that the alleged acts have been committed till the date of lodging of the FIR. The allegation that the petitioner continuously made physical relationship with her would not lead to a conclusion that the relationship was continuing till the date of lodging of the FIR. The petitioner attended the majority only on 03.10.2017 i.e.



one and half month prior to the date of lodging of the FIR.

It is his submission that, under the above circumstance, the prosecution of the petitioner continued. In course of trial, the victim girl appeared for her deposition on 8th May, 2018. She stated that the alleged occurrence had taken place with her about two years ago forcibly and thereafter on many occasions the alleged acts were committed with her on the pretext of marriage. The petitioner was also writing love letters to her. In paragraph '4' of her deposition she has stated that after about two months of the alleged occurrence when she had some medical issues then she had gone to the doctor and had disclosed the entire things to her mother.

Learned counsel has further drawn the attention of this Court towards her statement in paragraph '18' where in course of her cross-examination she stated that she had lodged the FIR one year after the alleged occurrence and two years from the date of her deposition.

Learned counsel submits that even though these materials were present on the record, the learned trial court has not at all looked into these materials and proceeded to reject the application of the petitioner by merely taking note of the allegations in the FIR and her statement under Section 164 Cr.P.C. The trial court has not considered the entire deposition of the



victim which is available on the record.

Learned counsel for the opposite party no.2 has though opposed this application but at the end learned counsel admits that these materials which are indicated hereinabove on behalf of the petitioner have not at all been considered.

Having regard to the submissions noted hereinabove and the materials available on the record, this Court finds that the deposition of the victim girl has not been considered in its entirety to consider the claim of juvenility of the petitioner. Certain paragraphs of her deposition have been placed before this Court and those have been indicated hereinabove which lead to a prima-facie view that the application claiming juvenility of the petitioner is required to be considered afresh keeping in view the depositions of the victim particularly that after two months of the alleged occurrence only she had felt some trouble and was taken to doctor where she had disclosed everything to her mother.

Learned counsel for the opposite party no.2 has agreed to this extent that at least till that date i.e. two months after the alleged occurrence the petitioner was a juvenile. The FIR has been lodged one year after the alleged occurrence, therefore these are the material facts which are required to be considered by the learned court below.

In result, the impugned order dated 08.04.2021 is



hereby set aside. The matter is remitted to the learned court below for giving a fresh consideration to the plea of juvenility of the petitioner for purpose of an enquiry in terms of sub-section(2) of Section 9 of the Juvenile Justice (Care and Protection of Children) Act, 2015 after giving adequate opportunity of hearing to both the sides.

Let it be recorded that the observations of this Court hereinabove are only for the purpose of this case and the learned court below shall exercise its own judicious mind independently.

This application stands allowed to the extent indicated hereinabove.

The certified copy of the order will be made available only after removal of the defects.

(Rajeev Ranjan Prasad, J)

arvind/-

U		T	
---	--	---	--

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'.

