

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.410 of 2022

Arising Out of PS. Case No.-13 Year-2020 Thana- MAHILA PS District- Gaya

XXX, Son of Sri Mahesh Yadav, Resident of Village - Simra, P.S.- Mohanpur,
Distt.- Gaya, Through his natural Guardian his father Sri Mahesh Yadav
... .. Petitioner/s

Versus

1. The State of Bihar
2. XXX, D/o Satyendra Ravidas, resident of village Siriyawan, Tola-
Falrachak, P.S.-Mohanpur, District-Gaya.
... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Arvind Kumar Singh, Advocate
For the State : Ms.Usha Kumari 1, Spl. P.P.

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

5 22-11-2022 As per process server's report the notice issued to
opposite party no.2 has been received by her mother.

Learned counsel for the petitioner has filed a jointness
affidavit by way of supplementary affidavit which is kept at
Flag 'C'. The same is accepted and the notice upon opposite
party no.2 be taken to have been validly served.

Heard learned counsel for the petitioner and Ms. Usha
Kumari-1, learned Spl.P.P. for the State.

This revision application has been preferred for
setting aside the impugned order/judgment dated 21.01.2022
passed in Criminal Appeal (Juvenile) No.81/2021 (C.I.S.) by
learned Special Judge (Children Court), Gaya whereby and
whereunder the learned Children Court has been pleased to
affirm the order dated 21.06.2021 passed by the learned Juvenile



Justice Board, Gaya in connection with Mahila P.S. Case No.13/2020, POCSO Case No.100/2020, Misc. Case No.94/2021 registered for the offences punishable under Sections 366(A), 376(D), 504, 506, 509 of the Indian Penal Code, Section 6 of the POCSO Act and Sections 3(1)(r)(s)(w)(i) of SC/ST Act by which the prayer for bail of the petitioner has been rejected.

Learned counsel for the petitioner submits that on a bare reading of the F.I.R. it would appear that the petitioner and the victim girl were in a love affair. It is stated that in course of investigation the Medical Officer has assessed the age of the victim girl and she has been found above 19 years old. It is submitted that on a reading of the F.I.R. itself it would appear that the victim girl had herself gone out with the petitioner and that the present case has been lodged only to put pressure upon the petitioner to solemnize marriage with him. The immediate concern of the victim as appearing from the F.I.R. is the denial on the part of the petitioner in marrying her. The F.I.R. has been lodged after five days of the alleged occurrence.

It is further submitted that the petitioner has been adjudged juvenile aged about 17 years and he is in the observation home in protective custody since 08.03.2021. It is



further submitted that the social investigation report of the petitioner though indicates that he has one criminal antecedent in a liquor case but in the said case the petitioner has been enlarged on bail. Referring to the judgment of 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**, learned counsel submits that while considering the prayer for bail of the petitioner, the classification of offences in bailable or non-bailable category is immaterial and it is the best interest of the child which will govern the order of the Court.

It is lastly submitted that if released on bail the father of the petitioner is ready to stand as surety and furnish an undertaking that he will not allow the petitioner to come in contact of any bad element and will connect him with the studies and main stream of the society and in case the petitioner indulges in any unlawful act, he will inform it to the jurisdictional police station.

Learned Spl.P.P. for the State having gone through the case diary and the social investigation report accepts that this case has arisen out of an admitted love affair between the petitioner and the victim girl and the victim girl had herself gone with the petitioner and then this FIR has been lodged after



five days. Learned Spl.P.P. has submitted that in paragraph '22' of the case diary the Medical Officer's report saying that the victim girl is above 19 years old has been recorded.

Having regard to the facts and circumstances of the case, the materials available on the record showing prima-facie at this stage that the victim girl was major being above 19 years old and she has stated in the FIR itself that she was in love with the petitioner and had gone with him whereafter the alleged physical relationship was made on the pretext of the marriage and this fact was told to the family members and the others also but only after the petitioner refusing to marry her, the case has been lodged after five days and further considering the spirit of Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015 and the judgment of the Hon'ble Division Bench of this Court in the case of **Lalu Kumar (supra)** wherein the Hon'ble Division Bench has held that all persons alleged to be in conflict with law and apparently a child when apprehended must be released except in the three circumstances which are 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 judgment 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, Gaya in connection with Mahila P.S. Case No.13/2020, POCSO Case No.100/2020, Misc. Case No.94/2021. 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, Gaya 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.

The application stands disposed of accordingly.

(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'.

