

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1 of 2021

Arising Out of PS. Case No.-7 Year-2020 Thana- MANSURCHAK District- Begusarai

SONU KUMAR, aged about 15 years, Male, Son of Mahesh Paswan, Resident of Village - Mansoorchak Kishun Tola, P.S.- Mansoorchak, Dist.- Begusarai through its legal Gaurdian Mahesh Paswan son of Bangli Paswan Resident of Village - Mansoorchak Kishun Tola, P.S.- Mansoorchak, Dist.- Begusarai.

... .. Petitioner

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Petitioner : Mr. Sabal Kumar Jha, Advocate
For the Respondent : Mrs. Pushpa Sinha, A.P.P.

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
ORAL ORDER

5 20-05-2022 Heard learned counsel for the petitioner and learned A.P.P. for the State through Virtual mode.

Learned counsel for the petitioner is directed to remove the defects, as pointed out by the office, within a period of four weeks.

This Criminal Revision Application has been preferred against the order dated 23.09.2020, passed by learned Additional Sessions Judge, Begusarai Ist Juvenile, in Criminal Appeal 53/2020, whereby the appeal filed by the petitioner against the order dated 18.08.2020, passed by learned Principal



Magistrate, Juvenile Justice Board, Begusarai, was dismissed whereby and whereunder the Juvenile Justice Board, Begusarai, has rejected the prayer for bail of the petitioner in connection with Mansoorchak P.S. Case No. 07/2020, G.R. No. 82/2020, J.J.B. No. 51/2020 registered under Sections 376(D) and 379 of the I.P.C.

The facts of the case, in brief, is that on 03.01.2020, while the informant was returning from *Pethiya* in the evening at 6.00 P.M., after purchasing vegetable and reached at the lonely place then four boys, namely, Dhiraj Kumar, Ajay Kumar, Sonu Kumar (petitioner) and Rajan Kumar after gagging her mouth and took away in south field and thereafter they committed rape upon her. Thereafter, in the night at 8.30 P.M., they have also taken away the informant behind the Mansoorchak Block in lonely hut where they have again raped upon her after taking liquor. Her Mobile bearing No. 6203043909 and cash Rs. 2,000/- have also been snatched by them. In the night at about 3.00 P.M., they released the informant after giving threatening to the effect that if she will disclose the matter to anyone they would kill her. Anyhow, the informant reached her home and narrated the entire story to her husband on phone.



Learned counsel for the petitioner submits that the petitioner is a juvenile and is in Remand Home since 10.01.2020. The petitioner has got no criminal antecedent. He has falsely been implicated in the present case. There is no allegation of tampering with the witnesses alleged against the petitioner. Charge sheet has been submitted in the present case. The alleged date of occurrence is 03.01.2020 as to when the case was instituted on 09.01.2020. Delay has not been explained by the prosecution. The victim was medically examined. From perusal of the medical report, it appears that there is no internal or external injury found on the body of the victim. Further, it has been opined that there is no evidence of recent sexual assault found on the victim. From perusal of the supplementary affidavit filed on behalf of the petitioner, it appears that the mother and the husband of the victim have not supported the allegation made in the F.I.R., during their examination as prosecution witnesses. Learned counsel has submitted that as per Section 18(g) of the Juvenile Justice Act, the maximum sentence which can be awarded to a juvenile is to direct the juvenile to be sent to a Special Home, for such period, not exceeding three years. Learned counsel for the petitioner has submitted that the petitioner has already remained in custody for



two years four months. He further submits that the father of the petitioner is ready to furnish an undertaking that while on bail he will not allow the petitioner to associate with criminals or anti-social elements. The petitioner has relied upon the judgment of ***Lalu Kumar and Ors. V. The State of Bihar (reported in 2019 (4) PLJR 833)*** where a Division Bench of this Court while considering the scope of Section 12 of the Juvenile Justice Act, 2015, in paragraph no. 84 of the judgment has observed the following.

“84. While interpreting Section 12, the Board is duty bound to be guided by the fundamental principles enumerated in Section 3 of the Act of 2015, specially the principles of ‘best interest’, ‘repatriation’ and ‘restoration’ of child. The fundamental principles in Section 3(xii) provides that a child shall be placed in institutional care as a step of last resort after making a reasonable inquiry. The gravity and nature of the offence are immaterial for consideration of bail under the Act of 2015. As per Section 12 of the Act of 2015, an application for bail is not decided by reference to classification of offences, as bailable or non-bailable under the Cr. P.C. All persons alleged to be in conflict with law and apparently a child when apprehended must be released except in the following three circumstances when there is reasonable ground for believing that:-

- (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 psychological danger; and*
- (iii) The release would defeat the ends of justice.”*

Learned A.P.P. for the State is present and has



opposed the prayer for bail of the petitioner. It has further been pointed out that the release of the petitioner would defeat the ends of justice.

Having regard to the facts and circumstances of the case, Social Investigation Report of the petitioner was called for from the concerned Probation Officer by order dated 31.01.2022. In his report, the Probation Officer has stated that the neighbours of the petitioner have stated that the petitioner is a studious boy and has never indulged in any criminal activity. Further from perusal of the report, it appears that there is no material in the social investigation report of the petitioner which indicates that the release of the petitioner will bring him in association of any known criminal nor there is any finding that the petitioner would be imposed to physical/psychological danger on his release.

The law requires that reasonable grounds should be there for believing that in the event of grant of bail, the petitioner would go into association of any 'known criminal' or exposed to moral, physical and psychological danger or the release of the person would defeat the ends of justice. There is no reference of any known criminal nor there is any other substantive material for the conclusion as recorded by the court



below.

Hence, the impugned order suffers from failure to exercise jurisdiction vested in law, is result of error apparent on the face of the record and non-consideration of provisions of law. Accordingly, this criminal revision application is allowed and the order dated 23.09.2020, passed by learned Additional Sessions Judge, Begusarai Ist Juvenile in Criminal Appeal 53/2020, as well as the order dated 18.08.2020, passed by learned Principal Magistrate, Juvenile Justice Board, Begusarai, in connection with Mansoorchak P.S. Case No. 07/2020, G.R. No. 82/2020, J.J.B. No. 51/2020, are set aside.

Let the petitioner, who has already been declared juvenile by the learned Juvenile Justice Board, be released in favour of his father on execution of surety bond of Rs. 10,000/- (Rupees Ten Thousand Only), to the satisfaction of learned Juvenile Justice Board, Begusarai, in connection with Mansoorchak P.S. Case No. 07/2020, G.R. No. 82/2020, J.J.B. No. 51/2020, with the condition that, the father of the petitioner shall furnish an undertaking that while the petitioner is on bail, he will not allow the petitioner to come in company/association with any criminal or anti-social element and that he will take proper care of the petitioner. Further, the petitioner will be



produced as and when required by the Juvenile Justice Board
and shall co-operate in the trial.

(Sudhir Singh, J)

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