

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.9 of 2021

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

AJAY KUMAR Son of Raj Kumar Paswan Resident of Village - Mansoorchak Kishun tola, P.S.- Mansoorchak, Dist.- Begusarai through its legal Guardian Seeta Devi aged about 30 years female wife of Raj Kumar Paswan, Resident of village - Mansoorchak Kishun tola, P.S.- Mansoorchak, Dist.- Begusarai

... .. Petitioner

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Petitioner/s : Mr.Sabal Kumar Jha, Advocate
For the Respondent/s : Mr. Navin Kumar Pandey, APP

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
ORAL ORDER

3 16-02-2022 Due to the third wave of COVID-19 Pandemic, the matter is being taken up by way of Virtual Court proceeding.

The matter has been listed under the heading 'For Orders' under the orders of Hon'ble the Chief Justice.

Heard learned counsel for the petitioner and learned APP for the State through virtual mode.

This criminal revision application has been preferred against the order dated 23.09.2020 passed by learned Additional Sessions Judge-1st in Juvenile Cr. Appeal No. 53/2020 whereby and whereunder the learned Sessions Judge has affirmed the order dated 18.08.2020 passed by the Principal Magistrate, Juvenile Justice Board, Begusarai whereby learned



Juvenile Justice Board 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 for the offences under sections 376 and 379 of the Indian Penal Code.

The prosecution allegation, in short, is that the accused persons including the petitioner committed gang rape on the informant.

It has been submitted on behalf of the petitioner that the petitioner is in custody since 10.12.2020. Charge-sheet has been submitted in the present case. There is no allegation of tampering alleged against the petitioner. The appellant has falsely been implicated in the present case. The case has been instituted after six days of the alleged occurrence. The medical examination report does not support the allegation of commission of rape. Learned counsel for the petitioner further submits that the mother of the petitioner is ready to furnish an undertaking that while on bail, she 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. Vs. 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.

Having regard to the facts and circumstances of the case, Social Investigation Report of the petitioner was called for from the concerned Probation Officer. The report does not reveal that there is any material to substantiate that in the event of grant of bail, the petitioner is likely to go into association of known criminals or any anti-social elements.



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 defect 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.

Considering the facts and circumstances of the case as well as the findings of the Probation Officer in the Social Investigation Report of the petitioner and the proposition of law as stated above, this criminal revision application is allowed and the order dated 23.09.2020 passed by learned Additional Sessions Judge-1st in Juvenile Cr. Appeal No. 53/2020 and order dated 18.08.2020 passed by the 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 mother on execution of surety bond of Rs. 10,000/- (ten thousand) to the satisfaction of 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 mother of the petitioner shall furnish an undertaking that while the petitioner is on bail, she will not allow the petitioner to come in company/association with any criminal or anti social elements that she will take proper care of the petitioner. Further the petitioner will be produced as and when required by the Juvenile Justice Board and shall cooperate during the trial.

(Sudhir Singh, J)

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