

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.621 of 2021

Arising Out of PS. Case No.-758 Year-2020 Thana- FATUA District- Patna

(XXX) Son of Indra Paswan Resident of Village - Ismailpur, P.S. and P.O. -
Parsa Bazar, District - Patna.

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

Appearance :

For the Petitioner/s : Mr. Saket Anand, Advocate

For the Respondent/s : Mr. Akhileshwar Dayal, APP

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

4 22-06-2022 Learned counsel for the petitioner undertakes to
remove all the defects as pointed out by the Stamp Reporter
within two weeks after start of normal functioning of the Court.

Heard learned counsel for the petitioner and Mr.
Akhileshwar Dayal, learned APP for the State.

The petitioner in the present case is seeking setting
aside of the judgment dated 13.08.2021 passed by learned
Additional Sessions Judge-I-cum-Child Court, Patna in Cr.
Appeal No. 66 of 2021 whereby and whereunder the order dated
19.03.2021 rejecting prayer for bail of the petitioner passed by
learned Juvenile Justice Board, Patna City, Patna in Juvenile
Justice Board Case No. 44 of 2021 arising out of Fatuha P.S.
Case No. 758 of 2020 registered for the offence punishable
under Section 376 (3) of the Indian Penal Code and Sections 4,
6 and 8 of POCSO Act has been affirmed.



Learned counsel for the petitioner submits that as per the prosecution story, this petitioner had given a call on the mobile number of the daughter of the informant on 23.10.2020 at about 10:30 P.M. On receiving the call, the petitioner asked the daughter of the informant to come out of her house whereupon the daughter of the informant went outside her house. It is alleged that this petitioner took her forcibly to a field and committed rape on her. It is further claimed that she, however, came out of the clutch of the petitioner, reached her house and started weeping whereafter she told the entire story to her father.

Learned counsel for the petitioner submits that this petitioner has been declared juvenile by the learned Juvenile Justice Board vide order dated 06.03.2020. It is further submitted that the petitioner happened to be a student of class XII and had been residing with her brother-in-law (*behnoi*) in the village for some time. It is his submission that because of village rivalry the present case has been lodged in which the petitioner has been falsely implicated.

Learned counsel submits that although the occurrence has taken place at 10:30 P.M., it was the day on which people were celebrating Durga Puja festival (*Mahashtami*) and



considering that the distance of the police station from the alleged place of occurrence is hardly 2 kilometers, the fact that the FIR has been lodged on the next day at 08:40 A.M. would be a case of inordinate delay in lodging of the FIR.

Learned counsel further submits that even though it was the festival day but nobody had seen the petitioner and the informant together and from the FIR itself it appears that the daughter of the informant had been talking to the petitioner and she had allegedly come out of her house at 10:30 P.M. In her statement under Section 161 Cr.P.C., the daughter of the informant has further explained that she had been talking to the petitioner whenever his call was coming to her but in order to save herself, she has stated that the petitioner was threatening her of causing assault if she would not talk to him and meet him.

It is pointed out that in the medical examination report, no injury either internal or external has been found on the body of the victim girl. No sign of any commission of sexual act has been noticed by the doctor. There is no other witness at all to support the allegation.

At last, it is submitted that the Probation Officer has visited the village and enquired into the conduct of the petitioner. He has found that this petitioner is a student of class



XII and his family is interested in providing him higher education. He has also found that this petitioner had after some initial quarrel with the informant shared the mobile number with each other and they were often talking and on the alleged date of occurrence also after talking with each other, they had gone outside the house. He found that the petitioner has no criminal antecedent and the family members and the villagers told him that the petitioner has been maintaining good conduct.

Learned counsel for the petitioner relies 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** and submits that the Hon'ble Division Bench has held in the said case that while considering the prayer for bail of a juvenile, the classification of the offence whether bailable or non-bailable is totally insignificant and a juvenile must be granted bail unless one of the following three conditions are present:-

- “(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.”

Learned APP for the State has opposed the prayer for



bail of the petitioner. It is submitted that the allegation against the petitioner is serious in nature and he does not deserve privilege of bail.

Having regard to the submissions noticed hereinabove and on finding that the petitioner has already been declared juvenile, the Probation Officer has reported that the petitioner and the victim girl were talking to each other after some initial quarrel, the petitioner is a student of class XII and his conduct has been reported good as disclosed by the villagers and at this stage he has already been remained in observation home since 25.10.2020, the Court has been informed that till date only chargesheet has been filed but the inquiry has not proceeded, in the circumstances, 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 Additional Sessions Judge-I-Special Judge, Child Court, Patna in connection with J.J.B. Case No. 44 of 2021 arising out of Fatuha P.S. Case No. 758 of 2020.

This Court has been informed that the father of the petitioner is ready to stand as a surety and submit an undertaking to the effect that if released on bail, he would



ensure that the petitioner does not stay in that village where the girl is staying and he will ensure that the petitioner continues with his studies so that he may be connected with the mainstream of the society and in case, the petitioner is found involved in any offence hereafter, he will immediately report to the jurisdictional police station and this Court further orders that the Probation Officer attached to the Juvenile Justice Board, Patna shall keep the vigil over the conduct of the petitioner and shall keep on submitting his report to the Juvenile Justice Board.

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'.

