

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.737 of 2021

Arising Out of PS. Case No.-217 Year-2021 Thana- ATRI District- Gaya

1. (XXX) Son Of Rajesh Manjhi Through His Father And Natural Guardian, Namely, Rajesh Manujhi Resident Of Village - Tausa, P.S.- Atri, Distt.- Gaya.
2. (YYY), Son of Tillu Manjhi, through his father and natural guardian, Namely, Tillu Manjhi. Resident of Village - Tausa, P.S.- Atri, Distt.- Gaya.
3. (ZZZ), Son of Lal Munni Chaudhary, through his father and natural guardian, namely, Lal Munni Chaudhary, Resident of Village - Tausa, P.S.- Atri, Distt.- Gaya.

... .. Petitioners

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Petitioner/s	:	Mr.Sanjeev Kumar, Advocate
For the Respondent/s	:	Mr.Umanath Mishra, A.P.P.

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

4 29-06-2022 Heard learned counsel for the petitioners and Mr. Umanath Mishra, learned A.P.P. for the State.

The three petitioners in this case are seeking setting aside of the order dated 25.09.2021 passed by learned Special Judge (Children Court), Gaya in Cr. Appeal (Juvenile) No. 62 of 2021 (C.I.S.) whereby and whereunder the order dated 02.09.2021 rejecting bail of the petitioners by learned Juvenile Justice Board, Gaya in Atri P.S. Case No. 217 of 2021 (Misc. Case No. 163 of 2021) registered for the offences punishable under Section 376(D) of the Indian Penal Code has been affirmed.

As per the prosecution story, the victim lady alleged that on 04.07.2021 at about 10.30 P.M. she along with her other family members were dancing and singing on the occasion of marriage



ceremony of her niece (Bhagani). At that point of time, the child in conflict with law (petitioner no. 1) came and started dancing with them. It is alleged that he took her in a field behind the house of co-villager Kapil Choudhary, on the way two other children in conflict with law (petitioner nos. 2 and 3) joined them. All the three persons forcefully committed rape on her because of which she became unconscious. After 2-3 hours she regained consciousness then she found herself in half nude condition then she called loudly to her family members and on hearing her voice, her family members and her daughter came there. Due to night she did not come to the Police Station.

Learned counsel submits that in this case, the informant is an illiterate lady. She cannot read or write Hindi which would be evident from the endorsement made by the learned Judicial Magistrate 1st Class at the bottom of the form of the deposition recorded under Section 164 Cr.P.C. It is, thus, submitted that it is not known as to who had written the complaint on which the thumb impression of the informant has been taken.

Learned counsel submits that the F.I.R. has been lodged on the next day at about 11.00 A.M. The petitioners are said to be the Devars of the victim lady and the Juvenile Justice Board, Gaya (hereinafter referred to as 'the Board') has assessed their age as 13-14 years, 13-14 years and 12-13 years respectively. In this connection, Annexure '3' to the present petition has been placed before this



Court.

Learned counsel submits that the order by which the age of the petitioners have been determined by the learned Board is not under challenge in any competent court of law.

Learned counsel further draws the attention of this Court towards the form of deposition (Annexure '2') on which the statement of the victim lady has been recorded under Section 164 Cr.P.C. She has declared her age as 40 years. She has stated in paragraph '2' of her statement that the occurrence is that of 4th July and in this connection the F.I.R. was lodged on 6th of July.

It is submitted that the story as alleged is highly improbable because according to the informant, she was dancing and singing with the family members on the occasion of the marriage ceremony of her niece and from there, she was taken away by one of the children (petitioner no. 1). It is submitted that it is highly improbable because in case of any such act by a boy of aged about 13-14 years, the informant who is 40 years old could have easily got rid of him that too when such large number of family members were present on the occasion.

Learned counsel further submits that as per the allegations, the victim lady was taken to a field by the boy who was aged about 14 years and on way the two other boys accompanied them, this story seems to be highly suspicious and fallacious on its own version.



It is further submitted that according to the victim lady, when she regained consciousness then she shouted and called her family members who came there and took her to home but this part of the story as alleged in the F.I.R. materially differs and contradicts her own statement under Section 164 Cr.P.C. where she states that she herself returned home. The medical examination report did not mention any sign of sexual assault on the informant.

Learned counsel submits that the informant has two males and one female child aged about 18 years, 15 years and 10 years respectively and it is highly unbelievable that the minor boys of aged about 13-14 years would commit rape on 40 years old lady that too by taking her in a field by one of them from the family ceremony.

It is, thus, submitted that it is a false and fabricated case in which these petitioners have been implicated. They have otherwise no criminal antecedents.

Learned APP for the State has though opposed the application but in course of argument, when this Court called upon him to say as to whether there is any independent witness to say that any one of the petitioners was seen forcibly taking away the victim lady to the field, learned A.P.P. says that there is no witness on this point.

Having regard to the submissions noted hereinabove and the materials on the record and on finding that these petitioners have been found aged about 13-14 years vide Annexure '3' to this application by the Board and they have remained in the observation



home since 06.07.2021 and they have no criminal antecedents as also their parents are ready to stand as sureties and willing to furnish an undertaking that if released on bail they would not allow the petitioners to fall in bad company and shall ensure that these petitioners remain connected with the mainstream of society and further following the ratio of the Hon'ble Division Bench judgment in the case of **Lalu Kumar and Ors. V. The State of Bihar** reported in **2019 (4) PLJR 833** as observed in paragraph '84' which reads as under:-

"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."



this Court sets aside the impugned order and directs release of the petitioners above named on bail on furnishing bail bond of Rs. 25,000/- (Rupees Twenty Five Thousand only) each with two sureties of the like amount each to the satisfaction of learned Juvenile Justice Board, Gaya in connection with Atri P.S. Case No. 217 of 2021 (Misc. Case No. 163 of 2021).

And further condition that one of the sureties shall be the fathers of the petitioners who will also furnish an undertaking that if released on bail the petitioners shall not be allowed to indulge in any unlawful act and all care will be taken that they do not fall in the company of anti-social elements and in case the petitioners indulge in any unlawful act, they will inform it to the jurisdictional police station.

And it is further ordered that the Probation Officer attached to the Juvenile Justice Board, Gaya shall keep a vigil over the petitioners and will be submitting his periodical reports to the Juvenile Justice Board as regards the conduct of the petitioners.

This 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'.

