

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.724 of 2021

Arising Out of PS. Case No.-187 Year-2021 Thana- PHULWARISHARIF District- Patna

(XXX) Son Of Dinesh Sharma Under Guardianship Of His Father Namely Dinesh Sharma, Resident Of Village - Chuarmal Nagar, P.O. Anishabad, P.S.- Phulwari Sharif, Distt.- Patna.

... .. Petitioner

Versus

1. The State of Bihar
2. Sangeeta Devi W/o Deena Choudhary Resident of Village - Chuarmal Nagar, P.S.- Phulwarisarif, Distt.- Patna.

... .. Opposite Parties

Appearance :

For the Petitioner/s	:	Mr. Girish Kumar Singh, Adv. Mr. Piyush Kant Singh, Adv.
For the State	:	Mr. Akhileshwar Yadav APP
For OP No.2	:	Mr. Chandramohan Jha, Adv.

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

7 19-09-2022 Heard learned counsel for the petitioner, Mr. Akhileshwar Dayal, learned APP for the State and Mr. Chandramohan Jha, learned counsel for the informant.

The petitioner in the present case had been adjudged juvenile. He is seeking setting aside of the impugned order dated 16.08.2021 passed in J.J.B. Case No. 149 of 2021 arising out of Phulwarisharif P.S. Case No. 187 of 2021 registered for the offences punishable under Sections 376(2)(1) of the Indian Penal Code, Section 6 of Protection of Child from Sexual Offences Act and Sections 3(2)(vii) of the SC/ST (Prevention of Atrocities) Act and release on bail.

The application for bail has been filed through his



father who has offered to stand as surety and furnish a bail bond.

On notice the informant has appeared through Mr. Chandramohan Jha, learned Advocate. Mr. Jha, learned counsel has opposed this application.

As per the informant while her daughter aged about 4 years was playing outside her house, the mother of one child who happened to be the neighbour of the informant came and informed her that her daughter was weeping behind her house and her pant was open and there was something white found which shows someone has done wrongful act with her.

It is alleged that she asked the victim child about this and then she disclosed that this petitioner had done a wrong act with her.

Learned counsel submits that the present case has been lodged on account of dispute between the two families. The petitioner has been falsely implicated in this case. He is aged about 14 years and has been declared juvenile. He is in protected custody since 24. 02. 2021 i.e. for last more than one and half year and at this stage since his father is ready to stand as surety and take care of the studies of the juvenile by keeping him away from the victim's family, the petitioner deserves to be united with his family and instead of institutional care, his



family re-union would be in the best interest of the child.

Learned counsel submits that the allegations mentioned in the First Information Report are though serious in nature but the materials which have come in course of investigation would go a long way to show that it may be a case of false implication. In this regard, learned counsel submits that the Medical Examination Report of the victim child was conducted by the Medical Board and in its report the doctor observed that “no mark of violence on her private part, no discharge present in vaginal swab taken on slide sealed and send to the Pathology Department, P.M.C.H. for needful for age determination victim is sent with a lady constable to the Radiology Department”. Later on, the Department of Pathology, P.M.C.H., Patna has given it’s report wherein the doctors have categorically stated that “the spermatozoa not found in the provided smear”.

Learned counsel submits that on the face of the Medical Report of the P.M.C.H. allegation that something white was found on the private part of the victim child stand falsifies and this indicates towards a false implication of the petitioner.

Learned counsel further submits that in any case the petitioner being a juvenile aged below 16 years, his case is



being inquired into at the level of the Juvenile Justice Board only and the maximum period for which the petitioner may be kept in the observation home would be three years. He has already stayed for more than one and half years.

It is further submitted with reference to the Social Investigation Report that no abnormality in the behaviour of the petitioner has been found. The Probation Officer has recommended to encourage the petitioner towards studies. He was studying in Class VIII. These facts have come in the Social Investigation Report.

On the other hand, learned counsel for O.P. No.2 and the State have jointly opposed the application. The submission on behalf of O.P. No.2 is that the allegation against the petitioner is that of commission of serious and heinous offence. In such circumstance, no interference is required with the impugned order.

In course of argument, when this Court called upon learned counsel for O.P. No.2 and learned A.P.P. for State to take a stand with reference to the Medical Examination Report, learned counsel agree that so far as the Medical Reports are concerned, they are not prima-facie indicating towards commission of rape. They are agreeing that enquiry is pending



with the Juvenile Justice Board.

In the given facts and circumstances of the case, having noticed that the petitioner is much below 16 years of age and stayed in the observation home for more than one and half years and further his father is ready to stand as surety and furnish an undertaking that if released on bail he will take care of the studies of the juvenile and will ensure that he does not fall in bad company and would not come in contact with the family of the victim and further following the spirit of Section 12 of Juvenile Justice (Care and Protection of Children) Act, 2015 and in view of the exceptions carved out by 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** that classification of the offences under the bailable and non-bailable sections would not be relevant for purpose of grant of bail to a juvenile and the prayer for bail of a juvenile may be rejected only under one of the three conditions 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 order 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, Patna in connection with Phulwarisharif P.S. Case No. 187 of 2021.

One of the surety should be the father of the petitioner and furnish an undertaking that if released on bail, he will take care of the studies of the petitioner and will ensure that he does not fall in bad company and would not come in contact with the family of the victim.

The Probation Officer shall keep on visiting the place of the petitioner and shall submit periodical report to the Juvenile Justice Board, Patna 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'.

