

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.778 of 2021

Arising Out of PS. Case No.-55 Year-2020 Thana- BHAGWANGANJ District- Patna

RAJESH KUMAR S/o Ganesh Yadav @ Ganesh Prasad Resident of Village- Bhojaur, P.S.- Bhagwanganj, District- Patna, under the Guardianship of Ganesh Yadav @ Ganesh Prasad, aged about 37 years, Male, S/o Late Ramesh Yadav, Resident of Village- Bhojaur, P.S.- Bhagwanganj, District- Patna.

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Ajay Kumar Sinha, Advocate
For the Respondent/s : Mr.Chandra Sen Prasad Singh, APP

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
ORAL ORDER

3 20-05-2022 Heard learned counsel for the petitioner and learned APP for the State through virtual mode.

Counsel for the petitioner is directed to remove the defect(s), as pointed out by the office, within a period of four weeks.

This criminal revision application has been preferred against the order dated 30.11.2021 passed in Criminal Appeal No.132/2021, whereby and whereunder the learned A.D.J. 1st-cum-Special Judge, Children Court, Patna has affirmed the order dated 21.09.2021, whereby learned Juvenile Justice Board, Gaighat, Patna has rejected the prayer for bail of the



petitioner in connection with J.J.B. case No.328/2021 arising out of Bhagwanganj P.S. case No.55/2020 registered for the offences under Sections 365, 376(D), 506 of the Indian Penal Code and Section 6 of POCSO Act.

The prosecution case, in brief, is that the accused persons including the petitioner forcibly took the victim on motorcycle and assaulted her. Further case of the prosecution is that the victim was confined in a room and she was subjected to rape.

It has been submitted on behalf of the petitioner that the petitioner is in custody since 23.04.2020 and has got no criminal antecedent. Charge sheet has been submitted in the present case. There is no allegation of tampering of witnesses alleged against the petitioner. The petitioner has falsely been implicated in the present case. The 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. The petitioner has already remained in custody for more than two years. Learned counsel for the petitioner 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. 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 Probation Officer in his report has reported that there is enmity between the family of the petitioner and the informant and for the said reason possibly the petitioner has been roped in the present case. Nothing adverse is against the petitioner by the neighbours. It has further been suggested by the Probation Officer that the petitioner may be released under the guardianship of his parents so that his studies may not hamper. Further 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 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.

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 30.11.2021 passed in Criminal Appeal No.132/2021 by the learned A.D.J. 1st-cum-Special Judge, Children Court, Patna and the order dated 21.09.2021 passed by the learned Juvenile Justice Board, Gaighat, Patna in connection with J.J.B. case No.328/2021 arising out of Bhagwanganj P.S. case No.55/2020, are set aside.

Let the petitioner, who has already been declared juvenile by the learned Juvenile Justice Board, be released in favour of father on execution of surety bond of Rs.10,000/- (Rupees ten thousand) to the satisfaction of learned Juvenile Justice Board, Gaighat, Patna in connection with J.J.B. case No.328/2021 arising out of Bhagwanganj P.S. case No.55/2020 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 elements that he will take proper care of the petitioner. Further the petitioner will be produced as and when required by the Court below and shall co-operate during the trial.

(Sudhir Singh, J)

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