

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.52 of 2023

Arising Out of PS. Case No.-210 Year-2022 Thana- DAGARUA District- Purnia

MD AYAN @ AYAN SON OF MD MANNAN @ MANNAN AND HASIB
R/O VILL.- CHAKWA/ CHAKAW, P.S.- DAGARUA, DISTT.- PURNEA IS
MINOR, UNDER THE GUARDIAN SHIP OF MD MANNAN @
MANNAN, AGED ABOUT-38 YEARS SON OF HASIB, R/O VILL.-
CHAKWA, P.S.- DAGARUA, DISTT.- PURNEA

... .. Petitioner/s

Versus

1. The State of Bihar
2. NOORI KHATOON @ NOORI PARWEEN D/O MD AWRUS R/O VILL.-
CHAKWA, P.S.- DAGARUA, DISTT.- PURNEA

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Nadimul Hasan
For the Respondent/s : Mr. Md. Shakir Ahmad

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

4 07-08-2023 Heard learned Counsel for the petitioner and learned
Additional Public Prosecutor appearing for the State.

2. This revision application has been filed against the
judgment and order dated 29.11.2022 passed by learned 1st
Additional Sessions Judge-cum-Special Judge, Purnea, in
Criminal Appeal No. 46 of 2022. By impugned order, the
learned 1st Additional Sessions Judge-cum-Special Judge,
Purnea, has affirmed the order, dated 13.10.2022, passed by the
Juvenile Justice Board, Purnea, arising out of Dagarua Police
Station Case No. 210 of 2022, registered for the offences
punishable under Sections 376/34 of the Indian Penal Code and



Section 4 of the of the Prevention of Child from Sexual Offences Act, 2012.

3. The prosecution case, as per the First Information Report, is that the petitioner used to follow the informant at school and madarsa and pressurized her to talk. On 02.07.2022, while the informant was going towards farm with her younger brother, the petitioner forcibly grabbed and gagged her and committed rape upon the informant. Upon knowledge, the panchayat was called, where the informant's mother was assaulted by the elder brother of the petitioner.

4. Learned Counsel for the petitioner submits that the petitioner was declared juvenile by order, dated 30.09.2022 passed by the learned Juvenile Justice Board, Aurangabad, after coming to the conclusion that the petitioner was minor at the time of alleged occurrence and was aged about 13 years, 02 months and 20 days. He next submits that by the impugned order, the learned 1st Additional Sessions Judge-cum-Special Judge, Purnea, has rejected the prayer of the petitioner for bail on erroneous conclusion that grant of bail to the petitioner may cause moral and psychological danger to him which would defeat the ends of justice. He next submits that learned 1st Additional Sessions Judge-cum-Special Judge, Purnea, did not



consider the social investigation report in correct legal perspective. The petitioner is in custody since 27.08.2022.

5. Learned Counsel relies upon Section 3 (i), (iv), (v) and (xiv) of the Juvenile Justice (Care and Protection of Children) Act, 2015, (hereinafter referred to as “the Act”), which are quoted herein below:-

“(i) Principle of presumption of innocence:- Any child shall be presumed to be an innocent of any mala fide or criminal intent up to the age of eighteen years.

(iv) Principle of best interest:- All decisions regarding the child shall be based on the primary consideration that they are in the best interest of the child and to help the child to develop full potential.

(v) Principle of family responsibility:- The primary responsibility of care, nurture and protection of the child shall be that of the biological family or adoptive or foster parents, as the case may be.

(xiv) Principle of fresh start:- All past records of any child under the Juvenile Justice system should be erased except in special circumstances”



6. Learned Counsel, referring to above mentioned provisions of law, submits that as per the scheme of the Act there is presumption of innocence of a child in conflict with law and all decisions regarding the child shall be taken in consonance with the principle of the best interest of the child. He further submits that the principle of family responsibility and principle of fresh start have also been recognized under the Act.

7. In reference to Section 12 of the Act, learned Counsel for the petitioner submits that bail to a child in conflict with law is a rule and denial is exception.

8. Learned Counsel, in the aforesaid background, submits that the learned 1st Additional Sessions Judge-cum-Special Judge, Purnea, has failed to consider the scheme of the Act and has committed irregularity in arriving at the conclusion that the petitioner, if release on bail, may expose to the moral and psychological danger which would defeat the ends of justice.

9. Learned Counsel further submits that the father of the petitioner is ready to take proper care of the petitioner after release on bail and shall not allow him to fall into bad company and would try to bring change in his behaviour, if required.

10. On the other hand, learned Additional Public



Prosecutor submits that from perusal of Section 12 of the Act, it appears that bail is a matter of right to a child in conflict with law and denial is exception and in view of the fact that father has given an undertaking to reform his child, i.e. the petitioner, this Court may consider to pass appropriate order in the best interest of the child in conflict with law.

11. A Bench of this Court, in the case of **Lalu Kumar @ Lalbabu @ Lallu v. State of Bihar**, reported in **2019 (4) PLJR 833**, while interpreting Section 12 of the Act has laid down the principle that the Board while considering bail of a Juvenile is duty bound to follow the principle of 'best interest', 'repatriation' and 'restoration' of child. The gravity and nature of offence are immaterial for consideration of bail of a juvenile. 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 Criminal Procedure Code.

12. Having regard to the submissions made by the parties and on perusal of the impugned order, I am of the considered opinion that there is possibility of reform in the petitioner inasmuch as he has got no criminal antecedent and the father of the petitioner is ready to take proper care of the petitioner after his release on bail as such there is no likelihood



that the petitioner may expose to the moral and psychological danger which would defeat the ends of justice. As such, the conclusion arrived at by learned 1st Additional Sessions Judge-cum-Special Judge, Purnea, that the petitioner may expose to the moral or psychological danger, is not sustainable in the facts and circumstances of the case.

13. In the result, this revision application is allowed and the order dated 29.11.2022, passed by learned 1st Additional Sessions Judge-cum-Special Judge, Purnea, in Criminal Appeal No. 46 of 2022, and order, dated 13.10.2022, passed by the Juvenile Justice Board, Purnea is hereby set aside.

14. Accordingly, the provisional bail granted to the petitioner by the order, dated 22.03.2023, is hereby confirmed.

(Anil Kumar Sinha, J)

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