

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.55 of 2022

Arising Out of PS. Case No.-92 Year-2021 Thana- KUSHESHWARASTHAN District-
Darbhanga

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XXXX Son of Shobha Ray, Resident of Village - Mishi, P.S.-
Kusheshwarasthan, District - Darbhanga, Under The Guardianship of his
father namely Shobha Ray, aged about 56 Years, Son of Dahaur Ray, Resident
of Village - Mishi, P.S.- Kusheshwarasthan, District - Darbhanga,

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Laxmi Kumari D/o- Horil Paswan, Resident of Village - Dih Kalna, P.S.-
Kusheshwarasthan, District – Darbhanga.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Girish Chandra Jha, Advocate
For the Respondent/s : Mr. APP

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CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

6 18-01-2023 Heard learned counsel appearing on behalf of the

revisionist/petitioner and learned APP appearing on behalf of the

State.

The present revision application is being preferred
against order dated 23.11.2021 passed in Cr. Appeal No. 21 of
2021 by the Court of learned 1st Addl. Sessions Judge-cum-
Children Court, Darbhanga, in connection with Kusheshwar
Asthana P.S. Case No. 92 of 2021, whereby and whereunder the
learned Court has rejected the prayer for bail of the
revisionist/petitioner.

Notice served upon, but informant failed to join the

present proceeding.

The revisionist/petitioner, aged about 17 years 03 months on the alleged date of occurrence i.e. 18.06.2021, is named in F.I.R., and is in custody/observation home since 14.05.2021.

The allegation against revisionist/petitioner is to commit rape upon the informant alongwith other co-accused persons while she was cutting grass in the field.

Learned counsel appearing on behalf of the revisionist/petitioner submitted that he is innocent and has been falsely implicated in this case due to neighbourhood dispute and differences. It is further submitted that alleged video of occurrence was made viral from the facebook account of co-accused Ram Briksha Paswan and not from this revisionist/petitioner. It is further pointed out that mandatory certificate under Section 65(B) of Indian Evidence Act was also not procured during the course of investigation for the electronic evidences which was collected during the course of investigation. It is further submitted that the medical report of the victim was also not supporting the occurrence as no injuries were found on the body or private part of the victim. It is further submitted that revisionist/petitioner is a man of clean antecedent

and moreover, no adverse report has been found against this revisionist/petitioner, as per his Social Investigation Report (S.I.R.), which also suggest non-involvement of revisionist/petitioner in present occurrence, on its face.

Learned counsel appearing on behalf of the revisionist/petitioner submitted that father of the juvenile petitioner is ready to stand as a surety and furnish an undertaking that he will take care of the revisionist/petitioner and shall ensure his studies as well as that he would not fall in bad company and would take all possible care to connect him with the mainstream of the society.

Learned APP duly assisted appearing on behalf of the informant, while opposing the prayer of bail, submitted that revisionist/petitioner actively participated in the alleged occurrence and victim supported the allegation against petitioner, while recording her statement under Section 164 of the Cr.P.C. However, learned APP has not pointed out any adverse material against revisionist/petitioner from the Social Investigation Report (S.I.R.).

Having regard to the submissions advanced as above, and materials showing that the petitioner has been adjudged juvenile aged about 17 years 03 months approximately on the

alleged date of occurrence, he has no criminal antecedent and the social investigation report of the petitioner is not showing any adverse material against him so as to dissuade this court for granting release of the petitioner on bail, as also that petitioner has remained in the Observation Home for about two years and his father is ready to stand as a surety and furnish an undertaking that if released on bail he will take care of the study of the petitioner and shall ensure that he does not fall in bad company and, in case, the petitioner indulges in any unlawful act, he will inform it to the jurisdictional police station as also following the spirit of section 12 of the 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. Vs. 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 the 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.”

Accordingly, this court sets-aside the impugned order and directs release of the petitioner 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 1st Addl. Session Judge Cum Children Court, Darbhanga, in Criminal Appeal No. 21 of 2021 arising out of Kusheshwar Asthan P.S. Case No. 92 of 2021.

One of the sureties should be the father of the petitioner and he will also furnish an undertaking in terms stated here-in-above.

The Probation Officer shall keep on visiting the place of the petitioner and shall submit periodical report to the Juvenile Justice Board (J.J.B.), Darbhanga, regarding conduct of the petitioner. If found anything adverse against this petitioner, the same will also be reported to the Board for necessary action.

(Chandra Shekhar Jha, J)

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