

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.113 of 2023

Arising Out of PS. Case No.-69 Year-2022 Thana- CHANDAUTI District- Gaya

XXX Son of Shri Gopal Manjhi Resident of Village- Bangali Bigha, P.S.-
Chandauti, District- Gaya (Child in Conflict with Law (Hereinafter CICL) X
(DOB- 08-08-2006) Minor Son of Gopal Manjhi, Resident of Village-
Bangali Bigha, P.S.- Chandauti, District- Gaya

... .. Petitioner

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Petitioner/s : Mr. Prakash Chandra Jha, Advocate
For the Respondent/s : Mr. Akhileshwar Dayal, APP

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

5 23-11-2023 Heard learned counsel for the petitioner and learned
A.P.P. for the State.

2. Petitioner in the present case is seeking setting aside of the order dated 23.11.2022 passed by learned Additional Sessions Judge-I-cum-P.O. Children Court, Gaya in Juvenile Appeal No. 19 of 2022 arising out of Chandauti P.S. Case No. 69 of 2022 registered for the offences under Sections 376 and 376AB of the Indian Penal Code whereby and whereunder the order dated 15.09.2022 passed by learned Principal Magistrate, Juvenile Justice Board, Gaya has been affirmed.

3. As per the prosecution story, on 24.11.2022 at 11 pm, informant heard weeping sound of his daughter who had gone to sleep, but was not in her bed. On hearing her weeping sound, the informant woke up and saw the door opened and her daughter was



crying and blood was oozing out of her private parts. His daughter disclosed that someone pressed her mouth and took her to middle school and committed bad things with her.

4. It is submitted that the present petitioner has been adjudged juvenile aged about fifteen years, six months, sixteen days on the alleged date of occurrence. In this regard, the copy of the certified copy of the order dated 15.09.2022 passed by the learned Juvenile Justice Board, Gaya (hereinafter referred to as the 'Board') has been brought on record as Annexure '2'.

5. Learned counsel submits that the petitioner is not named in the FIR, however the name of this petitioner has transpired in the confessional statement of the co-accused Shiv Shankar Yadav who is said to be the own uncle of the victim girl and is living in the same house with the victim girl.

6. Learned counsel submits that save and accept the confessional statement of the co-accused, there is no reliable material to connect the petitioner with the present case. The petitioner has otherwise no criminal antecedent and since he is aged below sixteen years, in case of the petitioner an inquiry is to be conducted by the Board and the maximum period for which the petitioner may stay in the observation home would be a period of three years.

7. Learned counsel submits that the petitioner has been



in observation home since 26.02.2022, therefore about one year nine months approximately have gone.

8. Earlier, this Court had called for the case diary and the social investigation report. The case diary and the report have been received and Mr. Akhileshwar Dayal, learned A.P.P. for the State has gone through the same.

9. Learned A.P.P. for the State has after going through the case diary informed that although the petitioner's name has transpired in the confessional statement of the co-accused but allegations have come that he was also involved in commission of rape. It is submitted that in her statement under Section 161 Cr.P.C. before police the victim girl has stated that when she was sleeping with her parents during the night hour, her uncle called her and when she came out then she found that two boys were standing whereafter they took her to the school premises after crossing the wall and there the rape was committed by her uncle and then both the boys had also committed rape. In her statement before Police, however, she had not named this petitioner who is said to be her neighbour.

10. Learned A.P.P. for the State further points out that the statement of the victim before the learned Magistrate has been recorded and the same has been mentioned in paragraph '67' of the case diary. Before the learned Magistrate, she has named only her



uncle as the perpetrator of the crime. She has specifically stated that it was the co-accused whom she calls uncle and who lives in the same house had been involved. In her statement before the Magistrate she has not named this petitioner.

11. Relying upon the Hon'ble Division Bench judgment of this Court in the case of **Lalu Kumar and Others vs. State of Bihar and Others** reported in **2019 (4) PLJR 833**, learned counsel submits that the spirit of Section 12 of the Act of 2015 has been considered by the Hon'ble Division Bench of this Court and it has been categorically held that in case of the juvenile, the allegation would not be a ground to reject the prayer for release on bail. It is only when one of the three conditions are satisfied or available, the bail may be refused.

12. Having regard to the facts and circumstances of the case noted hereinabove and on consideration of the fact that in her statement before the learned Magistrate which has been pointed out to this Court by learned A.P.P. in paragraph '67' of the case diary the victim has not taken name of this petitioner or said about any other person's involvement and further that this petitioner has been adjudged juvenile aged below sixteen years and has remained in observation home for about one year nine months and further taking note of the observations of paragraph '84' of judgement of the Hon'ble Division Bench of this Court in **Lalu Kumar (supra)**



which is 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 CrPC. 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.”

and in the social investigation report of the petitioner there is no serious kind of adverse observations and the Probation officer has found that the people have doubt that the petitioner would have participated in the alleged occurrence, this Court sets aside the impugned order and directs release of the petitioner abovenamed on bail on furnishing furnishing bail bond of Rs. 25,000/- (Rupees Twenty Five Thousand) with two sureties of the like amount each to the satisfaction of learned Principal



Magistrate, Juvenile Justice Board, Gaya in connection with Chandauti P.S. Case No. 69 of 2022.

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

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

15. This application stands allowed.

(Rajeev Ranjan Prasad, J)

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