

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.209 of 2022

Arising Out of PS. Case No.-89 Year-2021 Thana- MADANPUR District- Aurangabad

XXXX S/o Md. Islam @ Islam R/o village- Haripur, P.S.- Ahrauli, District-
Ambedkar Nagar (Uttar Pradesh) under guardianship of his father namely
Md. Islam @ Islam, S/o Mohammad Habib, R/o village- Haripur, P.S.-
Ahrauli, District- Ambedkar Nagar (Uttar Pradesh)

... .. Petitioner/s

Versus

The State of Bihar.

... .. Respondent/s

Appearance :

For the Petitioner/s : Ms. Leelawati Kumari, Advocate
For the Respondent/s : Mr. APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

4 19-01-2023 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 17.12.2021 passed in Cr. Appeal No. 21 of
2021 by the Court of learned Additional Sessions Judge-I, cum-
Special Judge Children Court, Aurangabad, in connection with
Cr. Appeal No. 29/2021/22/2021, G.R. No. 651/2021 arising out
of Madanpur P.S. Case No. 89/2021, whereby and whereunder
the learned Court has rejected the prayer for bail of the
revisionist/petitioner.

The revisionist/petitioner, aged about 17 years 09
months 26 days on the alleged date of occurrence i.e.



27.08.2021, is not named in F.I.R., and is in custody/observation home since 22.06.2021.

The allegation against revisionist/petitioner is to kidnap the daughter of informant for the purpose of illicit intercourse, where the allegation of rape/penetrative sexual assault was also added later on.

Learned counsel appearing on behalf of the revisionist/petitioner submitted that there was love affair between petitioner and victim, who developed relation through social media. It is further submitted that as petitioner is a juvenile less than 18 years, therefore allegation of elopement is not true in present case. It is further submitted that medical report of victim is not supporting the occurrence in terms of allegation. It is further submitted that occurrence took place on 17.04.2021 but FIR was lodged on 22.04.2021 after delay of five days without any explanation of such delay which creates doubt on the genuineness of the occurrence. 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.).

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 and also grow him as a good and law abiding citizen.

Learned APP appearing on behalf of the State, while opposing the prayer of bail, submitted that there is specific allegation of kidnapping and rape against revisionist/petitioner.

Having regard to the submissions advanced as above, and materials showing that the petitioner has been adjudged juvenile aged about 17 years 09 months 26 days 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 J.J. Board, Aurangabad, in Criminal Appeal No. 29/21 22/21, in G.R. No. 651/2021, JJB no. 719/21 arising out of Madanpur Case No. 89 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.), Aurangabad, 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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