

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.249 of 2022

Arising Out of PS. Case No.-353 Year-2019 Thana- BOCHAHAN District- Muzaffarpur

XXX S/o Sakal Thakur Resident of Village - Roshi, P.S. - Bochahan, District - Muzaffarpur.

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Nitu Kumari, Advocate

For the Respondent/s : Mr. Anant Kumar I, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

4 30-01-2023 Heard learned counsel appearing on behalf of the petitioner and learned APP appearing on behalf of the State.

Name of petitioner/revisionist is shown as “XXX” in this order.

The present revision application is being preferred against order dated 10.02.2022 passed by learned Additional District and Sessions Judge-1, Muzaffarpur in connection with Bochahan P.S. Case No. 353 of 2019, registered for offences punishable under Sections 376(G), 302, 34 of the Indian Penal Code (I.P.C.) and Sections 4 and 6 of POCSO Act.

The petitioner/revisionist, aged about 17 years 07 months and 16 days on the alleged date of occurrence i.e. 18.10.2019, is not named in F.I.R., and is in custody/observation home since 12.09.2020.



The allegation against petitioner is to commit rape upon the daughter of informant along with other named co-accused persons.

Learned counsel appearing on behalf of the petitioner/revisionist submitted that the petitioner/revisionist is not named in F.I.R., where thrust of allegation is available against named co-accused, namely, Badal Kumar. It is also submitted that as per F.I.R., it was named co-accused Badal Kumar, who called the daughter of informant soon before the occurrence from home. It is also pointed out that the name of petitioner/revisionist involved in this case merely out of the fact that on the date of occurrence, in the morning, about 6 to 7 times calls were made from the mobile, which is registered in the name of father of revisionist/petitioner, alleged to be used by petitioner, who is working in a barber shop. It is also submitted that as per S.I.R. (social investigation report) alleged conversation was made by co-accused, namely, Ajay Kumar, who is one of the relatives of the petitioner. It is also submitted that petitioner/revisionist is a man of clean antecedent and adjudged juvenile by J.J.B., where his age was assessed as 17 years, 07 months and 16 days, on the date of occurrence.

Learned counsel appearing on behalf of the peti-



tioner/revisionist 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 petitioner/revisionist 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 to groom him as a good and law abiding citizen.

Learned APP for the State, while opposing the prayer of bail submitted that the strong suspicion is available against this petitioner/revisionist as on the date of occurrence, several calls were made from the mobile, which was in use of this petitioner, registered in the name of his father. Learned APP has, however, not pointed out any adverse material from the Social Investigation Report.

Having regard to the submission and materials showing that the petitioner has been adjudged juvenile aged about 17 years, 07 months and 16 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 almost 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 Additional District and Sessions Judge -1, Muzaffarpur in connection with Bochahan P.S. Case No. 353 of 2019.

One of the sureties shall 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.), Muzaffarpur, 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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