

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.264 of 2022

Arising Out of PS. Case No.-24 Year-2021 Thana- MAHILA PS District- Aurangabad

NIRAJ KUMAR Son of Suryanath Paswan under the Guardianship of his
Fatheer nemely Suryanath Paswan Age 59 Year, Male , Son of Krit Paswan
Resident of Village - Khaira Salem, P.s.- Fesar, Distt.- Aurangabad (Bihar).

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Safdar Ali, Adv.

For the Respondent/s : Mr. Nawal Kishore Prasad, APP

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

4 11-07-2023 Heard Mr. Safdar Ali, learned counsel for
revisionist/petitioner and Mr. Nawal Kishore Prasad, learned
APP for the State.

2. The present Cr. Revision application has been filed
against the judgment and order dated 11.01.2022 passed in Cr.
Appeal (Juvenile) No. 28/21/21/21 by the learned Additional
Sessions Judge-cum-Special Judge (Children's Court),
Aurangabad along with order dated 16.11.2021 passed by
Principal Magistrate, Juvenile Justice Board, Aurangabad in
connection with GR. No.44/2021, JJB No.764/21 arising out of
Aurangabad (Mahila) PS Case No. 24/2021 for the offence
punishable under Sections 376/506/34 of the IPC and under
Section 4 of the POCSO Act and under Section 67 of IT Act
whereby and whereunder both the learned courts below have
refused to release the revisionist/petitioner on bail.

3. The allegation, as per prosecution story, lodged by



the informant, is that on 07.12.2020 at about 3:00 AM, when the daughter of the informant had gone to ease herself, seeing her alone, the petitioner, allegedly, committed rape upon her and with the help of his friend recorded the said event through mobile phone and on the basis thereof, he repeatedly used to blackmail the informant's daughter for sexual favour and ultimately, the petitioner's friend, Amrida Kumar posted the recorded video into Instagram and made it viral.

4. Learned counsel for the petitioner submits that the petitioner/revisionist has not committed any offence in the manner alleged inasmuch as the alleged video clip is of broad day light while the incident, allegedly, took place in the first week of December, 2020 at 3:00 AM in the early morning which is perhaps the darkest hour of the day. He next submits that the said video clip is a doctored one and the present petitioner has been falsely implicated in this case due to village politics. The findings arrived at by the learned appellate courts for rejection of the bail application are based upon no material who by impugned judgment arrived at an erroneous conclusion that petitioner has no respect of social relationship and does not have any control upon his deeds. On the contrary, the social investigation report suggests that the CICL is not in the



company of any anti-social elements and is not involved in any other criminal activity. It has further been alleged that there is a delay of seven months in lodging of the FIR and both the parties are neighbours. It has next been submitted that the learned court below has passed the impugned order mechanically and without application of judicial mind. He next submits that the petitioner is in judicial custody since 21.07.2021 and he was declared juvenile on 07.09.2020 by the court of Special Judge (POCSO) Aurangabad.

5. Learned counsel has placed reliance upon Sections 3 (i) (iv) (v) and (xiv) of Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as 'the Act') which are quoted hereinbelow:-

(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 the above mentioned provisions, 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 best interest** of the child. Learned counsel further submits that the **principle of family responsibility** and **principle of fresh start** have also been recognized in the Act.

7. Learned counsel further relies upon Section 12 of the Act which is as follows:-

12. Bail to a person who is apparently a child alleged to be in conflict with law.--

(1) When any person, who is apparently a child and is alleged to have committed a bailable or non-bailable offence, is apprehended or detained by the police or appears or brought before a Board, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 or in any other law for the time being in force, be released on bail with or without surety or placed under the supervision of a probation officer or under the care of any fit person: Provided that such person shall not be so released if there appears reasonable grounds for believing that the release is likely to bring that person into association with any known criminal or expose the said person to moral, physical or psychological danger or the person's release would defeat the ends of justice, and the Board shall record the reasons for



denying the bail and circumstances that led to such a decision.

(2) When such person having been apprehended is not released on bail under sub-section (1) by the officer-in-charge of the police station, such officer shall cause the person to be kept only in an observation home in such manner as may be prescribed until the person can be brought before a Board.

(3) When such person is not released on bail under sub-section (1) by the Board, it shall make an order sending him to an observation home or a place of safety, as the case maybe, for such period during the pendency of the inquiry regarding the person, as may be specified in the order.

(4) When a child in conflict with law is unable to fulfill the conditions of bail order within seven days of the bail order, such child shall be produced before the Board for modification of the conditions of bail.

8. 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 an exception.

9. Learned counsel for the petitioner, in the aforesaid background, submits that the learned court below has failed to consider the scheme of the Act and has committed material irregularity in arriving at the conclusion that the petitioner, if released on bail would defeat the ends of justice as the petitioner has committed a heinous crime.

10. On the other hand, learned counsel for the State submits that from perusal of Section 12 of the Act, it appears



that bail is a matter of right to the petitioner and denial is an exception, this Court may consider to pass an appropriate order in accordance with the provisions of the Act.

11. From perusal of the records, it appears that petitioner is in custody since 21.07.2021 .

12. Having regard to the submissions made by the parties and taking into consideration the material on record and the fact that there was no material before the learned appellate court to come to the conclusion that the petitioner is not having any respect for social relationship and the court below has rejected the bail application on the ground that the petitioner has committed a heinous offence and taking into consideration the social investigation report in which probationary officer has stated that villagers have informed that victim's mother has made similar charges on other villagers in the past and there is delay of seven months in lodging the FIR, this Court is of the considered view that the impugned judgment and order passed by both the courts below are not sustainable in the eyes of law inasmuch as they are not consistent with the aims and objects of the Act.

13. Accordingly, the judgment and order dated 11.01.2022 passed in Cr. Appeal (Juvenile) No. 28/21/21/21 by



the learned Additional Sessions Judge-cum-Special Judge (Children's Court), Aurangabad along with order dated 16.11.2021 passed by Principal Magistrate, Juvenile Justice Board, Aurangabad in connection with GR. No.44/2021, JJB No.764/21 arising out of Aurangabad (Mahila) PS Case No. 24/2021 for the offence punishable under Sections 376/506/34 of the IPC and under Section 4 of the POCSO Act and under Section 67 of IT Act, are hereby, set aside and the revisionist/petitioner, Niraj Kumar is directed to be released on bail on furnishing bail bond of Rs. 10,000/- (Ten Thousand) with two sureties of the like amount each to the satisfaction of learned Principal Magistrate, Juvenile Justice Board, Aurangabad in connection with GR. No.44/2021, JJB No.764/21 arising out of Aurangabad (Mahila) PS Case No. 24/2021, subject to the condition that one of the bailors will be the father of the petitioner.

14. With the aforesaid observation and direction, the instant application is allowed.

(Anil Kumar Sinha, J)

perwez

U		T	
---	--	---	--

