

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.2156 of 2023

In
CRIMINAL REVISION No.895 of 2022

Arising Out of PS. Case No.-83 Year-2022 Thana- KATIHAR MUFFASIL District- Katihar

=====

X-1, son of Santosh Sharma @ Fuddu Sharma through under the guardianship of mother namely Jooniya Devi, D/o Viru Sharma and wife of Santosh Sharma @ Fuddu Sharma, R/o Village-Rakasha, P.S.-Muffasil, District-Katihar.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

=====

Appearance :

For the Appellant/s : Mr. Suresh Prasad Sah @ Baranwal, Advocate
For the Respondent/s : Mr. Narendra Kumar Singh, APP

=====

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 14-12-2023

Heard learned counsel appearing on behalf of the appellant and learned APP appearing on behalf of the State.

2. The present appeal is being preferred against the order dated 04.11.2022 passed by learned Additional Sessions Judge-1st-cum-Children Court, Katihar in G.R. 2158 of 2022 arising out of Muffasil P.S. Case No.83 of 2022 by which the learned Court has refused to enlarge the appellant on bail in a case registered for offences punishable under Section 376 of the Indian Penal Code.

3. The Child in conflict with law (for short 'CICL')/appellant, aged about 17 years 01 month and 02 days on the alleged date of occurrence i.e. 16.05.2022, is named in



F.I.R. and is in observation home since 18.05.2022.

4. The allegation against the CICL/appellant is to commit rape upon daughter of informant aged about 10 years while she was playing inside her home after taking her to a nearby primary school.

5. Learned counsel appearing on behalf of the appellant submitted that even as per the FIR, appellant/CICL is aged about 15 years, whereas on the basis of determination of age by Juvenile Justice Board, the age of CICL/appellant was found 17 years 01 month and 02 days on the date of occurrence. It is submitted that the implication of the appellant is out of neighbourhood dispute. Learned counsel further pointed out that the learned Executive Magistrate, who recorded the statement of victim under section 164 of the CrPC on 26.05.2022 clearly indicate that victim was not in a position to reply even simple question/queries related to her domestic affairs, suggest *prima facie* that she was mentally challenged. It is further pointed out that upon medical examination, no injury was noticed on her private part. Learned counsel also pointed out that the appellant was not examined in terms of Section 53-A of the Code of Criminal Procedure (for short 'CrPC') despite of the fact that the appellant was arrested immediately after the occurrence.



While concluding argument, it is submitted that the investigation of the case has been completed and, as such, charge-sheet has been submitted, there is no chance of tampering with the evidence.

6. Learned counsel appearing on behalf of the appellant submitted that mother of the juvenile-appellant is ready to stand as a surety and furnish an undertaking that she will take care of the appellant and shall ensure that he would not fall in bad company and would take all possible care to connect him with the mainstream of the society.

7. Learned APP for the State while opposing the prayer for bail submitted that there is specific allegation against the appellant/CICL as to commit rape upon the daughter of informant.

8. Having regard to the submissions and materials showing that the appellant has been adjudged juvenile aged about 17 years 01 month and 02 days on the alleged date of occurrence, and also as appellant has remained in the Observation Home since 18.05.2022 and his mother is ready to stand as a surety and furnish an undertaking that if released on bail she will take care of the appellant and shall ensure that he does not fall in bad company and, in case, the petitioner



indulges in any unlawful act, she 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, which are 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.”

9. The probation report, which was called vide order dated 10.02.2023 is available on record. On perusal of the said report, it appears that the mental level of CICL/appellant is appearing as a child. In the said report, nowhere mentioned that CICL/appellant cannot be reformed as to rejoin the main stream of society.



10. Having regard to the submissions made by the parties and taking into consideration the materials on record as well as the period of incarceration of the appellant/CICL and in the best interest of CICL, this Court is of the considered view that the impugned order passed by the court below is not in consonance with the aims and objectives of the Act.

11. In view of the aforesaid facts and circumstances, as appellant/CICL found 17 years and one month on the date of occurrence, where the victim girl fails to name the petitioner during recording her statement under Section 164 of the CrPC, coupled with the fact that charge-sheet has already been submitted, where in social investigation report nowhere suggest that CICL/appellant cannot be reformed in future as to join the main stream of society, accordingly, the order dated 04.11.2022 passed by learned Additional District Judge-1st-cum-Children Court, Katihar, in G.R. 2158 of 2022 arising out of Muffasil P.S. Case No.83 of 2022 is hereby set aside.

12. The appeal is allowed.

13. Let the appellant, named-above, be released 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 Judge-1st-cum-Children Court, Katihar in connection with G.R. 2158 of 2022 arising out of Muffasil P.S. Case No. 83 of 2022 on the following conditions:-

- (i) That one of the sureties should be the mother of the appellant; and
- (ii) That the mother of the appellant shall file an affidavit before the learned Juvenile Justice Board, Katihar giving specific undertaking that after release of the appellant on bail, she will take proper care of the appellant and will not allow him to fall into bad company.

(Chandra Shekhar Jha, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18.12.2023
Transmission Date	18.12.2023

