

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.331 of 2023

Arising Out of PS. Case No.-564 Year-2022 Thana- KAHALGAON District- Bhagalpur

CHANCHAL KUMAR @ ASUTOSH RAJ SON OF SRI BALRAM KUMAR MANDAL @ BALRAM MANDAL R/O-KULKULIYA, P.S.-GHOGHA, DISTT.-BHAGALPUR

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Swapnil Kumar Singh, Advocate.
For the Respondent/s : Mr. Amitesh Kumar, A.P.P.

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

6 03-08-2023 Heard learned Counsel for the petitioner and learned Additional Public Prosecutor appearing for the State.

2. This Criminal Revision has been filed against the judgment and order dated 23.03.2023 passed by learned Additional Sessions Judge-I-cum-Special Judge (Children Court), Bhagalpur, in Criminal Appeal No. 11 of 2023, by which, the learned Additional Sessions Judge-I-cum-Special Judge, (Children Court) Bhagalpur, has affirmed the order, dated 29.09.2022, passed by the Principal Magistrate, Juvenile Justice Board, Bhagalpur, in POCSO Case No. 107 of 2022 arising out of Kahalgaon (Ghogha) P.S. Case No. 564 of 2022 registered for the offences punishable under Sections 376, 504, 506, 34, 201 of the Indian Penal Code, Section 8 of the POCSO Act and



Section 67-A of Information Technology Act.

3. The allegation as per the First Information Report, is that the daughter of the informant was in relation with the petitioner and she often used to visit the house of the petitioner. It has further been alleged that the petitioner allured the daughter of the informant and took her to the swimming pool situated near Lauhipur on Motorcycle and after mixing something in the cold drink given to the daughter of the informant to consume it and, thereafter, outraged her modesty. Some other persons who were present there took the photograph of whole incident. Further allegation is that the petitioner had made viral the objectionable photograph of daughter of the informant and threatened the informant with dire consequences.

4. Learned Counsel for the petitioner submits that by the impugned order, the learned Additional Sessions Judge-I-cum Special Judge (Children Court), Bhagalpur, has rejected the prayer of the petitioner for bail on erroneous conclusion that grant of bail would cause moral and psychological danger to the petitioner. He next submits that learned Additional Sessions Judge-I-cum-Special Judge (Children Court), Bhagalpur, did not consider the social investigation report in correct legal perspective and the petitioner is in custody since 15.7.2022. The



medical evidence does not support the allegation of rape. The victim is major and as per her statement recorded under Section 164 Cr. P.C. the victim was in love with the petitioner.

5. Learned Counsel relies upon Section 3 (i), (iv), (v) and (xiv) of the Juvenile Justice (Care and Protection of Children) Act, 2015, (hereinafter referred to as “the Act”), which are quoted herein below:-

“(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 above mentioned



provisions of law, 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 the best interest of the child. He further submits that the principle of family responsibility and principle of fresh start have also been recognized under the Act.

7. Learned Counsel further relied upon Section 12 of the Act, which is quoted 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 (2 of 1974) 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 subsection (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 may be, 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 exception.

9. Learned Counsel, in the aforesaid background,



submits that the learned Additional Sessions Judge-I-cum-Special Judge (Children Court), Bhagalpur, has failed to consider the scheme of the Act and has committed irregularity in arriving at the conclusion that the petitioner may fall into bad company, if released on bail and it would defeat the ends of justice.

10. Learned Counsel further submits that the mother of the petitioner is ready to take proper care of the petitioner after release him on bail and shall not allow him to fall into bad company and would try to bring change in his behaviour, if required.

11. On the other hand, learned Additional Public Prosecutor submits that from perusal of Section 12 of the Act, it appears that bail is a matter of right to a child in conflict with law and denial is exception and in view of the fact that mother has given an undertaking to reform her child, i.e. the petitioner, this Court may consider to pass appropriate order in the best interest of the child in conflict with law.

12. Having regard to the submissions made by the parties and on perusal of the impugned order, I am of the considered opinion that there is possibility of reform in the petitioner inasmuch as he has got no criminal antecedent and the



mother of the petitioner is ready to take proper care of the petitioner after his release on bail and there is no likelihood that the petitioner will fall into association with any known criminal(s). As such, the conclusion arrived at by learned Additional Sessions Judge-I-cum- Special Judge (Children Court), Bhagalpur, that the petitioner may fall into bad company, is not sustainable in the facts and circumstances of the case.

13. Accordingly, this Criminal Revision is allowed and the order dated 29.09.2022 and 23.03.2023 respectively passed in Criminal Appeal No. 11 of 2023 by learned Additional Sessions Judge-I-cum-Special Judge (Children Court), Bhagalpur, and learned Principal Magistrate, Juvenile Justice Board, Bhagalpur, are hereby set aside.

14. Let the petitioner, above named, 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, Bhagalpur, in POCSO Case No. 107 of 2022 arising out of Kahalgaon (Ghogha) P. S. Case No. 564 of 2022, subject to the following conditions:-

*(i) that one of the bailors shall be
the mother of the petitioner;*



(ii) that the mother of the petitioner shall file an affidavit before the learned Juvenile Justice Board, Rohtas at Sasaram, giving specific undertaking that after release of the petitioner on bail, she will take proper care of the petitioner and will not allow him to fall into bad company.

(Anil Kumar Sinha, J)

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