

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.378 of 2023

Arising Out of PS. Case No.-517 Year-2022 Thana- DARIYAPUR District- Saran

RAHUL KUMAR SON OF HOTI RAY @ HOTI RAI NATURAL
GUARDIAN OF RAHUL KUMAR RESIDENT OF VILLAGE-
SIKANDRA, TARWA MANGARPAL, PS- DARIYAPUR, DISTRICT-
SARAN

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Shyameshwar Kumar Singh
For the Respondent/s : Dr. Ajeet Kumar

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

ORAL ORDER

5 27-09-2023 Heard learned Counsel for the petitioner and learned
Additional Public Prosecutor appearing for the State.

2. This revision application has been filed against the judgment and order dated 17.04.2023 passed by learned 1st Additional Sessions Judge, Saran at Chapra, in C.C. Case No. 04 of 2023. By impugned order, the learned 1st Additional Sessions Judge, Saran at Chapra, has affirmed the order, dated 17.11.2022, passed by the Juvenile Justice Board, Saran at Chapra, in Juvenile Justice Board No. 2463 of 2022, arising out of Dariyapur Police Station Case No. 517 of 2022, registered for the offences punishable under Section 376 of the Indian Penal Code.



3. The prosecution case, as per the First Information Report, is that on 05.09.2022, at about 07:00 PM, when the informant had gone to attend call of nature in the farm, the petitioner, along with two accused persons, restrained the informant and raped her one by one and left her abandoned in the farm. The informant disclosed the matter to her mother, when she arrived from Delhi.

4. Learned Counsel for the petitioner submits that there is delay of 05 days in filing First Information Report. Upon examination of the victim/informant by the doctor, the doctor has opined and recorded that there is no evidence of recent sexual intercourse and the age of the victim/informant has been assessed above 20 years. He further submits that as per the First Information Report, the date of birth of the informant is recorded as 01.03.2004 and the date of occurrence is 05.09.2022, accordingly, the informant was aged about 18 years and 06 months. He next submits that the petitioner has falsely been implicated in the case due to village politics and the petitioner has got no criminal antecedent.

5. Learned counsel submits that the petitioner was minor at the time of alleged occurrence. He next submits that by the impugned order, the learned 1st Additional Sessions Judge,



Saran at Chapra, has rejected the prayer of the petitioner for bail on erroneous conclusion that the petitioner, if released on bail, would fall into association with known criminal(s) and/or grant of bail may cause moral, physical and psychological danger to him which would defeat the ends of justice. He next submits that learned 1st Additional Sessions Judge, Saran at Chapra, did not consider the social investigation report in correct legal perspective. The petitioner is in custody since 29.09.2022.

6. 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”

7. 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.

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 1st Additional Sessions Judge, Saran at Chapra, has failed to consider the scheme of the Act and has committed irregularity in arriving at the conclusion that the petitioner, if released on bail, would fall into into association



with known criminal(s) and/or grant of bail may cause moral, physical and psychological danger to him which 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 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. A Bench of this Court, in the case of **Lalu Kumar @ Lalbabu @ Lallu v. State of Bihar**, reported in **2019 (4) PLJR 833**, while interpreting Section 12 of the Act has laid down the principle that the Board while considering bail of a Juvenile is duty bound to follow the principle of 'best interest', 'repatriation' and 'restoration' of child. The gravity and nature of offence are immaterial for consideration of bail of a juvenile.



As per Section 12 of the Act of 2015, an application for bail is not decided by reference to classification of offences as bailable or non-bailable under the Criminal Procedure Code.

13. 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 the mother of the petitioner is ready to take proper care of the petitioner after his release on bail and as such there is no likelihood that the petitioner, if released on bail, would fall into association with known criminal(s) and/or grant of bail would cause moral, physical and psychological danger to him, which would defeat the ends of justice. As such, the conclusion arrived at by learned 1st Additional Sessions Judge, Saran at Chapra, is not sustainable in the facts and circumstances of the case.

14. Accordingly, this revision application is allowed and the order dated 17.04.2023, passed by learned 1st Additional Sessions Judge, Saran at Chapra, in C.C. Case No. 04 of 2023 and order, dated 17.11.2022, passed by learned Juvenile Justice Board, Saran at Chapra, in Juvenile Justice Board No. 2463 of 2023, are hereby set aside.

15. Let the petitioner, above named, be released on



bail on furnishing bail bond of Rs. 10,000/- (ten thousand) each with two sureties of the like amount each to the satisfaction of learned Juvenile Justice Board, Saran at Chapra, in connection with Juvenile Justice Board No. 2463 of 2022, arising out of Dariyapur Police Station Case No. 517 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, Saran at Chapra, 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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