

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.428 of 2022

Arising Out of PS. Case No.-222 Year-2021 Thana- MANIHARI District- Katihar

XXX Son of Barun Kumar @ Varun Kumar Mandal R/v- Bauliya, P.S.-
Manihari, District- Katihar Under the care and custody of his father natural
guardian Barun Kumar @ Varun Kumar Mandal

... .. Petitioner/s

Versus

1. The State of Bihar BIHAR
2. SULEKHA DEVI Wife of Rajesh Kumar R/o- Bauliya, Ward No. 15, P.S.-
Manihari, Dist- Katihar

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Ajit Kumar Singh, Advocate
For the Respondent/s	:	Mr.Jagdhar Prasad
For O.P. No.2	:	Sanjeev Kr. Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

4 09-01-2023 Heard learned counsel appearing on behalf of the
petitioner and learned APP appearing on behalf of the State.

Name of the petitioner shown as 'XXX' in the cause
title of this order.

The present revision application is being preferred
against order/judgement dated 02.04.2022 passed by learned 1st
Additional Sessions Judge-cum-Special Judge, Katihar, in
Criminal Appeal No. 05 of 2022 by which the learned Court
refused to enlarge the petitioner on bail in connection with
Manihari P.S. Case No. 222 of 2021 registered for offence under
Section 376 (AB) of the Indian Penal Code and under Section 6
of POCSO Act, 2012.



The petitioner/revisionist, aged about 15 years 08 month and 22 days on the alleged date of occurrence i.e. 15.10.2021, is named in F.I.R., and is in custody/observation home since 03.12.2021.

The allegation against this petitioner is to commit rape upon the daughter of the informant.

Learned counsel appearing on behalf of the petitioner/revisionist submitted that petitioner has falsely been implicated in this case due to neighbourhood dispute and differences. It is submitted that medical report of the victim is not supporting the allegation against this petitioner, as no internal injury was noticed during examination. It is further submitted that no adverse report has been gathered against this petitioner from social investigation report (SIR).

Learned APP duly assisted by learned counsel appearing on behalf of the O.P. No.2, while opposing the prayer of bail, submitted that non finding of medical evidence does not lead to a conclusion *ipso facto* that rape was not committed upon.

Having regard to the submission and materials showing that the petitioner has been adjudged juvenile aged about 15 years 08 months and 22 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 more than one year and his father/mother 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/revisionist 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 1st Additional Sessions Judge-cum-Special Judge, Katihar/concerned Court in connection with Manihari P.S. Case No. 222 of 2021.

One of the sureties should be the father of the petitioner/revisionist 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.), Katihar, regarding conduct of the petitioner. If found anything adverse against this petitioner/revisionist, the same will also be reported to the Board for necessary action.

(Chandra Shekhar Jha, J)

R.S.Sen/-

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