

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.452 of 2022

Arising Out of PS. Case No.-477 Year-2020 Thana- CHANPATIA District- West Champaran

RUSTAM ANSARI SON OF NEK MAHAMAD ANSARI @ NEK MIYAN
RESIDENT OF VILLAGE- CHAUMUKHA, P.S.- JOGAPATTI, DISTRICT-
WEST CHAMPARAN, AT PRESENT VILLAGE- KHARDEUR MAHANA,
P.S.- CHANPATIA, DISTRICT- WEST CHAMPARAN UNDER THE
NATURAL GUARDIANSHIP HIS FATHER, NAMELY, NEK MAHAMAD
ANSARI @ NEK MIYAN.

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Bashishtha Narayan Mishra, Adv Mr. Brij Kishore Mishra, Adv. Mr. Sachida Nand Rai, Adv.
For the Respondent/s	:	Mr. Nawal Kishore Prasad, APP

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

3 31-08-2023 Heard the parties.

2. The present Cr. Revision application has been filed against judgment and order dated 01.06.2022 passed in Cr. Appeal No. 10/2022 by the learned Additional Sessions Judge 1st, Children Court, West Champaran, Bettiah along with order dated 14.12.2021 passed by Juvenile Justice Board, West Champaran, Bettiah in connection with Chanpatia PS Case No. 477/2020, JJB Case No. 661/2021 for the offence punishable under Sections 341, 342, 376(G), 504/34 of the IPC, Section 67 of the I.T. Act and 4/6 of the POCSO Act, whereunder both the learned courts below have refused to release the



revisionist/petitioner on bail.

3. Prosecution case as narrated in the FIR by the informant that two months earlier while she had gone for mowing grasses for her cattle, the petitioner along with two other accused persons, namely, Arman Ansari and Shamshad Ansari, pounced upon her and took her to the cane field of one Rinku Mishra where she was disrobed by Shamshad Ansari and the petitioner who was standing nearby filmed the said event by mobile. Thereafter, the petitioner established sexual relationship forcefully and threatened that if it is revealed to anyone, she would be gang raped and killed. Out of fear, she did not disclose the occurrence to anyone. After some time, the petitioner made the said video viral on whatsapp and on that pretext, he again demanded sexual favour from the victim but this time, she informed her mother, as a result thereof, the present FIR.

4. Learned counsel for the petitioner submits that the petitioner/revisionist has not committed any offence in the manner alleged and he has been implicated in this case on the basis of village enmity. It has next been submitted that the allegation made in the FIR is full of concoction and fabrication and there is an inordinate delay in filing of the FIR having no explanation for the same. 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 release of the petitioner from the protective custody will expose him to moral, physical and psychological danger and will also defeat the ends of justice and the juvenile/petitioner may also fall in bad company. It has next been submitted that the learned court below has passed the impugned order mechanically and without application of judicial mind.

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. 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.

8. Learned counsel 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 fall in the same environment.

9. 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.

10. From perusal of the records, it appears that petitioner is in custody since 21.09.2020.

11. A Bench of this Court in the judgment reported in **2019 (4) PLJR 833** in the case of **Lalu Kumar @ Lalbabu @ Lallu v. State of Bihar** while interpreting Section 12 of the Act has laid down the principle that the Board while considering the 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 CrPC.

12. Having regard to the submissions made by the parties and taking into consideration the material on record and



the fact that the petitioner is in protective custody since 21.09.2020 and there was no material before the learned appellate court to come to the conclusion that the release of the petitioner from the protective custody will expose him to moral, physical and psychological danger and will also defeat the ends of justice, 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, judgment and order dated 01.06.2022 passed in Cr. Appeal No. 10/2022 by the learned Additional Sessions Judge 1st, Children Court, West Champaran, Bettiah along with order dated 14.12.2021 passed by Juvenile Justice Board, West Champaran, Bettiah in connection with Chanpatia PS Case No. 477/2020, JJB Case No. 661/2021 for the offence punishable under Sections 341, 342, 376(G), 504/34 of the IPC, Section 67 of the I.T. Act and 4/6 of the POCSO Act, are hereby, set aside and the revisionist/petitioner, ***RUSTAM ANSARI*** 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 Juvenile Justice Board, Bettiah, West Champaran in connection with



aforementioned case subject to the condition that father of the petitioner shall be one of the bailors.

14. With the aforesaid observations and directions, the instant application stands allowed.

(Anil Kumar Sinha, J)

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