

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.3661 of 2023

Arising Out of PS. Case No.-25 Year-2022 Thana- MAHILA P.S. District- Bhagalpur

Balram Kumar @ Balram Mandal son of Police Mandal Village- Dudhailla
Ward No-2, Bhawanipur Dist- Bhagalpur

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Manoj Kumar Jha, Advocate
For the Respondent/s : Ms. Abha Singh, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

4 20-12-2023 Heard learned counsel appearing on behalf of the

appellant/petitioner and learned APP appearing on behalf of the

State.

2. The present application is being preferred against judgment dated 08.05.2023 passed by learned Additional Sessions Judge-1-cum Special Judge (Children Court) Bhagalpur in Special Case (Children) No. 2 of 2023 by which the learned Court refused to enlarge the petitioner on bail in case arising out of Naugachia Mahila P.S. Case No. 25 of 2022 registered for the offence punishable under Section 376 of the Indian Penal Code and Section 4 of the POCSO Act.

3. The appellant/petitioner, aged about 17 years 05 months and 27 days on the alleged date of occurrence i.e. 06.08.2022, is named in F.I.R., and is in custody/observation



home since 08.08.2022.

4. The allegation against this appellant/petitioner is to commit rape upon daughter of informant while she was alone in her house on 30.07.2022.

5. Learned counsel appearing on behalf of the appellant/petitioner submitted that out of local disputes and differences appellant/juvenile was implicated with the present case, who is otherwise a poor laborer of the same village. It is submitted that F.I.R. is based on hearsay input as provided by victim, which was lodged with a delay of seven days, clearly suggesting false implication out of afterthought. It is further submitted by learned counsel that even as per the narration of F.I.R. and also by the statement of victim it simplicity implies on its face that some “wrong act” was committed upon her, which was not necessarily, rape/penetrative sexual assault. It is submitted that this fact gets its strength from medical examination of victim also, where no injury was found in and around private parts negating, *prima facie*, allegation of rape/penetrative sexual assault. Learned counsel submitted that as the aunty of victim found appellant, while taking exit from the house of victim, while she was alone the present false implication was raised under impression that appellant



committed sexual offence upon the daughter of informant.

6. Learned counsel appearing on behalf of the appellant/petitioner submitted that father of the juvenile appellant/petitioner is ready to stand as a surety and furnish an undertaking that he will take care of the appellant/petitioner and shall ensure his studies as well as 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 specific allegation of rape/penetrative sexual assault is available against appellant, which is duly supported by victim herself during the course of investigation.

8. Having regard to the submission and materials showing that the appellant has been adjudged juvenile aged about 17 years 05 months and 27 days approximately on the alleged date of occurrence, where 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 appellant/petitioner on bail, as also that appellant has remained in the Observation Home for more than one year and his father is ready to stand as a surety and furnish an undertaking that if



released on bail he will take care 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.”

9. From the perusal of social investigation report, it appears that appellant/petitioner is a man of clean antecedent and student of class 11. As per said report no adverse opinion regarding behavior of appellant/petitioner was noticed and it



also appears that out of suspicion, present false case was lodged. It also appears that matter was earlier compromised but subsequently present case was lodged. It nowhere appears from the report that appellant/petitioner cannot join the mainstream of society and his reform is an impossible task.

10. In view of aforesaid facts and circumstances and from the statement of victim as surfaced during the course of investigation, it appears that only “wrong act” was committed upon her without specifying anything regarding penetrative sexual assault, where medical report is also not suggesting, *prima facie*, evidence of rape/penetrative sexual assault committed upon her coupled with the fact social investigation report nowhere suggest as appellant/petitioner could not reform himself as to join the mainstream of the society. Accordingly, this court sets-aside the impugned order and directs release of the appellant/petitioner on bail on furnishing bail bond of Rs.10,000/- (Rupees Ten Thousand only) with two sureties of the like amount each to the satisfaction of learned Additional Sessions Judge-1-cum Special Judge (Children Court) Bhagalpur/concerned Court in connection with Naugachia Mahila P.S. Case No. 25 of 2022.

11. One of the sureties should be the father of the



appellant/petitioner and he will also furnish an undertaking in terms stated here-in-above.

12. 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.), Bhagalpur, regarding conduct of the appellant. If found anything adverse against this appellant/petitioner, the same will also be reported to the Board for necessary action.

(Chandra Shekhar Jha, J.)

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