

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.4143 of 2023**

Arising Out of PS. Case No.-113 Year-2019 Thana- MAHILA P.S. District- Araria

XX

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellant/s : Mr. Gopal Kumar Jha, Advocate

For the Respondent/s : Mr. Mukeshwar Dayal, APP

**CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT**

Date : 21-12-2023

Heard learned counsel appearing on behalf of the
appellant and learned APP appearing on behalf of the State.

2. The present appeal is being preferred against the
order dated 27.07.2023 passed by learned 1st Additional
Sessions Judge-cum-Special Judge, Araria, in Special (child)
Case No.5 of 2023 arising out of Mahila P.S. Case No.113 of
2019 by which the learned Court has refused to enlarge the
appellant on bail in a case registered for offences punishable
under Sections 376, 504 read with 34 of the Indian Penal Code
and Section 4 of the Protection of Children from Sexual
Offences Act (for short 'POCSO Act').

3. The accused-appellant-CCL named in the FIR



and is in observation home since 10.04.2023.

4. The allegation against this CCL-appellant is to commit rape/penetrative sexual assault upon the informant, who claims her aged through FIR as 17 years, on the false pretext of marriage.

5. The accused-appellant appeared juvenile on the date of occurrence and his age was assessed by the Juvenile Justice Board, Araria as 16 years and 05 months on the alleged date of occurrence.

6. It is submitted by learned counsel appearing on behalf of the appellant-accused that for any of the social reasons, marriage of appellant-CCL could not be negotiated with the informant/victim girl, the present false implication was raised. It is further submitted that on 02.08.2019 at about 8:00 AM, the brother of informant and her relatives made an attempt for forced marriage with juvenile-appellant but, after intervention of co-villagers, it was not materialized. It is submitted that the present implication is only with a view to create a pressure to solemnize the marriage. Learned counsel further submitted that nothing surfaced in medical examination, which may connect the juvenile-appellant-CCL with the allegation as raised through present FIR.



7. Learned counsel appearing on behalf of the appellant submitted that father of the juvenile-appellant is ready to stand as a surety and furnish an undertaking that he will take care of the appellant and shall ensure that he would not fall in bad company and would take all possible care to connect him with the mainstream of the society.

8. Learned APP while opposing the prayer for bail submitted that allegation is specific against appellant-jvenile as to commit rape/penetrative sexual assault upon the informant.

9. Having regard to the submissions and materials showing that the appellant has been adjudged juvenile aged about 16 years 05 months on the alleged date of occurrence and also as appellant has remained in the Observation Home since 10.04.2023 and his father is ready to stand as a surety and furnish an undertaking that if appellant be released on bail, he will take care of the appellant and shall ensure that he does not fall in bad company and, in case, the appellant 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.”

10. Nothing appears from the impugned order where social investigation report/probation report of appellant-CCL is discussed that he could not reform himself as to join the main stream of the society.

11. Having regard to the submissions made by the parties and taking into consideration the materials available on record as well as the period of incarceration of the appellant/CCL and in the best interest of CCL, this Court is of the considered view that the impugned order passed by the court below is not in consonance with the aims and objectives



of the Act. Accordingly, the order dated 27.07.2023 passed by learned 1st Additional Sessions Judge-cum-Special Judge, Araria, in Special (child) Case No.5 of 2023 arising out of Mahila P.S. Case No.113 of 2019 is hereby set aside.

12. In view of aforesaid facts and circumstances, as appellant-CCL adjudged 16 years and 05 months on the alleged date of occurrence, where allegation of rape/penetrative sexual assault *prima facie* made in the background of false promise of marriage, accordingly, the appellant, above-named, be released 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 1st Additional Sessions Judge-cum-Special Judge, Araria in Special (child) Case No.5 of 2023 arising out of Mahila P.S. Case No.113 of 2019 on the following conditions:-

(i) That one of the sureties should be the father of the appellant; and

(ii) That the father of the appellant shall file an affidavit before the learned Juvenile Justice Board, Araria giving specific undertaking that after release of the appellant on bail, he will take proper care of the appellant and will not allow



him to fall into bad company.

13. The appeal is allowed.

(Chandra Shekhar Jha, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22.12.2023
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