

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.746 of 2022

Arising Out of PS. Case No.-106 Year-2017 Thana- ISHUPUR BARAHAT District-
Bhagalpur

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IMRAN ANSARI S/O Kalimuddin @ Kalimuddin Ansari R/O Village-
Pakkapul Azad Nagar, P.S- Ishipur, District- Bhagalpur Petitioner/s
Versus

THE STATE OF BIHAR Respondent/s

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Appearance :

For the Petitioner/s : Dr. Manoj Kumar

For the Respondent/s : Mr. Sanjay Kumar Singh

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

3 21-09-2023 Heard the parties.

2. The present Cr. Revision application has been filed against judgment and order dated 02.07.2022 passed in Special Case (Children) No. 5684/2017 by the learned Additional Sessions Judge 1st -cum-Special Judge, (Children's Court), Bhagalpur in connection with Ishipur (Barahat) PS Case No. 106/2017 for the offence punishable under Section 376, 341, 323, 504, 506/34 IPC and 4 of the POCSO Act, whereunder the learned court below has refused to release the revisionist/petitioner on bail.

3. Prosecution case as alleged in the FIR that on 25.09.2017, 27.09.2017 and on 29.09.2017, the petitioner committed rape upon the informant and when the informant's mother went to complain about the incident, she was threatened of dire consequences.

4. Learned counsel for the petitioner submits that the petitioner/revisionist has not committed any offence in the



manner alleged and he has falsely been implicated in this case due to village politics. It has next been submitted that from the FIR itself, it is evident that the occurrence, allegedly, took place on 25.09.2017 and the FIR has been lodged on 19.10.2017, i.e., almost after 24 days and that too without any cogent reason. The narration of the FIR very clearly portrays the improbability of the incident inasmuch as, allegedly, the informant was raped thrice by the petitioner on different dates but the FIR was lodged after 24 days of the alleged occurrence. It has next been submitted that the petitioner having no criminal antecedent is rotting in custody since 17.08.2018 i.e., for five years. It is further submitted that the medical report of the victim does not corroborate the allegation levelled against the petitioner as no sign of rape and no spermatozoa has been found after chemical examination of the victim. The findings arrived at by the learned appellate court 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 protective custody since 17.08.2018 and he has been declared juvenile by Juvenile Justice Board, Bhagalpur.

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 custody since 17.08.2018 i.e., for five years and there was no cogent 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 and the juvenile/petitioner may also fall in bad



company, this Court is of the considered view that the impugned judgment and order passed by the court below is not sustainable in the eyes of law inasmuch as it is not consistent with the aims and objects of the Act.

13. Accordingly, judgment and order dated 02.07.2022 passed in Special Case (Children) No. 5684/2017 by the learned Additional Sessions Judge 1st -cum-Special Judge, (Children's Court), Bhagalpur in connection with Ishipur (Barahat) PS Case No. 106/2017 for the offence punishable under Section 376, 341, 323, 504, 506/34 IPC and 4 of the POCSO Act, is hereby, set aside and the revisionist/petitioner, mentioned above, 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 Additional Sessions Judge 1st-cum-Special Judge, (Children's Court), Bhagalpur, in connection with aforesaid PS Case No.

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

(Anil Kumar Sinha, J)

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