

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.785 of 2021

Arising Out of PS. Case No.-136 Year-2018 Thana- CHARPOKHARI District- Bhojpur

XXX S/o Naresh Ram R/o Village- Pasaur, P.S.- Charpokhari, District- Bhojpur. Under Guardianship of His Father Naresh Ram, 65 yrs. S/o Jhabli Ram, r/o village- Pasaur, P.S.- Charpokhari, District- Bhojpur.

... .. Petitioner/s

Versus

The State of Bihar Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Ravi Prakash
For the Respondent/s : Mr.A.G.

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

5 11-01-2023 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 01.11.2021 passed by learned 1st Additional Sessions Judge-cum-Children Court, Bhojpur (Ara), and also order dated 27.07.2021 passed by J.J.B., Dhanupara, Bhojpur (Arrah) in J.J.B. No. 1405 of 2018, 1593 arising out of Charphokhari P.S. Case No. 136 of 2018 registered for offence under Section 376 of the Indian Penal Code and under Section 6/8 of POCSO Act.

The petitioner/revisionist, aged about 15 years 09



days on the alleged date of occurrence i.e. 24.06.2018, is named in F.I.R., and is in custody/observation home since 05.01.2021.

The allegation against this petitioner is to commit rape upon the minor daughter of the informant, aged about 4 years.

Learned counsel appearing on behalf of the petitioner/revisionist submitted that allegation was raised under suspicion, where admittedly, victim and petitioner were relatives attending marriage party and sleeping together on the roof of the house on the date of occurrence. It is submitted that revisionist/petitioner is a man of clean antecedent, where father of petitioner assures to extends his all possible care to bring the revisionist/petitioner in the main stream of the society. It is further submitted that the findings of appellate court that release of petitioner being relative of the victim may cause adverse effect, is not appearing justified, whereas there is no such adverse report is appearing from social investigation report (SIR), and as such said reason is appearing vague on its face. While arguing the matter, learned counsel relied upon the judgement of Supreme Court in the matter of **Dr. Subramanian Swamy and Ors. vs. Raju** reported in **2014 SCC 390** in which it has been held that a juvenile has to be released on bail, where the exception carved out as there must be reasonable ground to



release, on release juvenile may join the association of some known criminals or, would expose to moral, physical or pshychological danger or his release would defeat the end of justice. It is also submitted that informant is not the eye witness of the occurrence as revisionist/petitioner was found only closing his zip, on this ground alone, suspicion of rape was raised. Learned counsel further submitted that juvenile was granted bail by JJB, but due to technical reason his bail was cancelled through impugned order, as signature of Principal Magistrate was missing in the order of JJB, dated 02.04.2019.

Learned APP, while opposing the prayer of bail, submitted that there is specific allegation against revisionist/petitioner to commit rape.

Having regard to the submission and materials showing that the petitioner has been adjudged juvenile aged about 15 years 09 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 about two years 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 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 J.J.Board, Dhanupara, Bhojpur (Arrah)/concerned Court in connection with Charphokhari P.S. Case No. 136 of 2018.

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.), Dhanupara, Bhojpur (Arrah), 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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