

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL REVISION No.794 of 2022**

Arising Out of PS. Case No.-330 Year-2021 Thana- MAIRWAN District- Siwan

XXX, S/O Late Umesh Kumar Pandey, Resident of village- Laxmipur, P.S.-  
Mairwa, District- Siwan Under the Guardianship of his mother Gita Pandey  
wife of late Umesh Kumar Pandey.

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

**Appearance :**

|                      |   |                                                                    |
|----------------------|---|--------------------------------------------------------------------|
| For the Petitioner/s | : | Mr. Radha Mohan Singh, Advocate<br>Mr. Ajay Kumar Tiwary, Advocate |
| For the State        | : | Mr. Akhileshwar Dayal, APP                                         |
| For the Informant    | : | Mr. Prashant Kumar, Advocate                                       |

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD**  
**ORAL ORDER**

11     11-12-2023                      Heard learned counsel for the petitioner, learned counsel  
for the informant and Mr. Akhileshwar Dayal, learned APP for the  
State.

2. Petitioner in the present case is seeking setting aside  
of the judgment and order dated 23.12.2001 passed by learned  
Presiding Officer, Children Court-cum-1st Additional District and  
Sessions Judge-cum-Special Judge, Siwan in Cr. Appeal No.42 of  
2021 whereby and whereunder the learned court has been pleased  
to dismiss the appeal and affirm the order dated 20.11.2021 passed  
by the learned Juvenile Justice Board, Siwan in Mairwa P.S. Case  
No.330 of 2021 registered for the offences alleged under Sections  
376 and 506 of the Indian Penal Code and Section 6 of the POCSO  
Act by which the prayer for bail of the petitioner has been refused.



In relation to the same matter, the mother of the victim girl had lodged one 'Zero' FIR at Delhi which is described in paragraph '3' of the application.

3. As per the prosecution story, the allegation against the petitioner is that he had committed rape upon the daughter of the informant.

4. Learned counsel for the petitioner submits that from all the materials which have been collected in course of investigation, it would appear that the petitioner and the victim girl both were studying in the same school, they had developed love affair, the victim girl used to go to the house of the petitioner, however, it is alleged in the FIR lodged by the mother of the victim girl that this petitioner established physical relationship with the victim girl and she admits that both were talking over telephone. It is alleged that since the year 2019, the petitioner had established physical relationship with the victim girl on many occasions by pressurizing her. As per allegations, he called the husband of the informant and expressed his desire to marry the victim girl whereupon the husband of the informant tried to convince him that presently he was unemployed and the girl is also minor, therefore, unless he becomes able and establishes himself, the marriage cannot be arranged, however, it may be considered if the petitioner becomes eligible and employed. On this, it is alleged



that the petitioner took the ID of the Instagram of the daughter of the informant and uploaded several objectionable pictures which were also sent to the relatives of the informant.

5. Learned counsel for the petitioner submits that the Probation Officer has reported in his report submitted to the Juvenile Justice Board that the petitioner and the victim girl were friendly to each other, however, they had a quarrel on some issue whereafter the present FIR has been lodged. It is submitted that the social investigation report and the social background report of the petitioner does not show any adverse remarks against him. The neighbours have reported that he is of good nature and there is otherwise no complaint against him. His father died earlier, the mother lives on pension and one brother is serving in Railways.

6. It is submitted that from the trial court's report, it would appear that the petitioner is not being produced as a result whereof till date even the charge has not been framed. He is in observation home since 23.10.2021, therefore, more than two years have already been spent. It is submitted that if he is released on bail at this stage, he may be connected with his studies which would help him in continuing with the mainstream of the society, otherwise over the period he will lose his chances of studies and it may not be possible for him to connect himself with the studies after losing few more years. The mother and the brother of the



petitioner are ready to furnish undertaking that if released on bail they would keep the petitioner away from the family of the victim girl and shall get him admitted in a proper educational institution from where he can continue his studies.

7. Learned counsel for the petitioner relies upon a judgment of the Hon'ble Division Bench of this Court in the case of **Lalu Kumar and Ors. versus The State of Bihar** reported in **2019 (4) PLJR 833**.

8. On the other hand, learned APP for the State as well as learned counsel for the informant have vehemently opposed this application. It is submitted that the victim girl has supported the prosecution story.

9. Learned counsel for the informant submits that the victim girl is now at Delhi with her father and as per the FIR, the victim girl and the petitioner were friends and the victim girl was visiting his house. Learned counsel, however, submits that it is not a simple case of friendship and the adolescence love affair rather in the process the petitioner had taken some objectionable photographs and the same were uploaded on the Instagram and sent to the near relatives.

10. Having heard learned counsel for the parties as also on perusal of the social investigation report, social background report and the trial court's report, this Court has also gone through



the judgment of the Hon'ble Division Bench of this Court in the case of **Lalu Kumar** (supra). According to the Hon'ble Division Bench judgment of this Court, the kind of allegations may not be relevant for purpose of consideration of bail of a juvenile. Paragraph "84" of the said judgment reads as under:-

"84. While interpreting Section 12, the Board is duty bound to be guided by the fundamental principles enumerated in Section 3 of the Act of 2015, specially the principles of 'best interest', 'repatriation' and 'restoration' of child. The fundamental principles in Section 3(xii) provides that a child shall be placed in institutional care as a step of last resort after making a reasonable inquiry. The gravity and nature of the offence are immaterial for consideration of bail under the Act of 2015. 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 Cr.P.C. All persons alleged to be in conflict with law and apparently a child when apprehended must be released except in the following three circumstances when there is reasonable ground for believing that :-

- (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 psychological danger;and
- (iii) The release would defeat the ends of justice."

**11.** In the present case from the FIR and the materials particularly the report of the Probation Officer, it appears to this Court that both the boy and the victim girl were friendly to each



other, the informant, who is mother of the victim girl, was fully aware of the fact that they were friend and the victim girl was visiting the house of the petitioner, the petitioner has remained in observation home for more than two years, till date even charge has not been framed, he is presently aged about 19 years and his mother and brother are ready to undertake that if released on bail he will be connected with the studies so that he may remain in the mainstream of the society and at the same time they are ready to ensure that the petitioner does not come in touch with the victim and her family, in the circumstances, since the trial itself is not likely to be concluded in near future and it is a case of juvenile which will be governed by the ratio of the judgment of the Hon'ble Division Bench of this Court, this Court is of the opinion that the best interest of the child would be to connect him with the mainstream of the society by giving him an opportunity to go for his studies at this stage.

**12.** This Court, therefore, sets aside the impugned order and directs release of the petitioner above named 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 Juvenile Justice Board, Siwan in connection with Mairwa P.S. Case No.330 of 2021, Juvenile Trial No.373 of 2021.



**13.** One of the bailors would be either the mother or brother of the petitioner who will furnish an undertaking in terms recorded hereinabove.

**14.** The Probation Officer shall also keep vigil over the petitioner and shall submit periodical report to the Juvenile Justice Board, Siwan as regards the conduct of the petitioner. If anything adverse is found against the petitioner, the same will also be reported to the Board for necessary action.

**15.** During his period on bail, the petitioner shall not in any way approach the victim girl or the family members of the girl.

**16.** This application stands allowed.

**(Rajeev Ranjan Prasad, J)**

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