

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.4359 of 2022

Arising Out of PS. Case No.-90 Year-2020 Thana- MAHILA P.S. District- Araria

ISHFAQUE @ MD. ISFAQUE Son of Rahil @ Md. Rahil Resident of
Village- Gurmi, Nayatola, Jhamta, Ward No.-10, P.S.- Forbesganj(Sirmaha),
District- Araria, Bihar

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. NK Agrawal, Senior Advocate and
Mr.Sanjay Kr Sharma & Ms.D Kumari, Advocates
For the Respondent/s : Mr.Abhay Kumar, Spl. Public Prosecutor

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL ORDER

4 21-06-2023 Heard learned counsel for the parties.

The present appeal has been filed against order dated 29.9.2022, passed by learned 1st Additional Sessions Judge cum Special Judge, Araria in Special Child Case No. 05 of 2022 (arising out of Mahila Police Station Case No. 90/2020) lodged for the offence punishable under sections 376(3)/34 of the IPC read with section 4 of the POCSO Act, by which, the bail application of the petitioner has been rejected.

As per the prosecution case, on the false assurance of marriage, this appellant established physical relation with the victim as a result of which she conceived six months pregnancy. Thereafter, panchayati was convened but petitioner still not married the victim.



It is submitted on behalf of the appellant that the appellant has been declared juvenile vide order dated 26.8.2022 (annexure P/3). He is in Observation Home since 13.6.2022.

As per the statute, the bail application of a child in conflict with law is not to be considered on the merit of the case or nature of allegation or gravity of the offence, rather in terms of Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as 'J.J.Act'). The Social Investigation Report, submitted by Legal-cum-Probation Officer in respect of appellant, is not adverse and there is no such finding to the effect that release of the appellant will expose him to moral, physical or psychological danger or will fall in association with criminals or his release would defeat the ends of justice. The bail application of the appellant has been rejected by the learned court below taking into consideration the nature of allegation and gravity of the offence, which is not in consonance with Section 12 of the J.J.Act.

At the time of considering the bail matter of a juvenile, the merit of the case or nature and gravity of allegation have no relevancy and are not ground to deny bail to a juvenile, rather the learned court below is required to look into the aspects, which are enumerated in Section 12 of the



J.J.Act and Social Investigation Report.

Considering the rival submissions of the parties as also the Social Involvement Report and the position of law as stated above, order 29.9.2022 is, hereby, set aside and the appeal is allowed.

Accordingly, the above-named appellant 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 Additional Sessions Judge I cum Special Judge Children Court, Araria in Special (Child) Case No. 05/2022 (Mahila Police Station Case No. 90/2020), subject to condition that one of the bailors will be father of the appellant and he (father of the appellant) would file an affidavit giving an undertaking to the effect that he will take care of good behaviour and child's (appellant's) well-being and will not allow him to go in the company of bad elements.

(Prabhat Kumar Singh, J)

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