

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.39 of 2023

Arising Out of PS. Case No.-66 Year-2021 Thana- MAHILA PS District- Buxar

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XXX, Son of Kalika Ray, R/V - Darahpur, P.S- Buxar (Ind.) Dist- Buxar,
Kalika Ray aged about 60 years S/o Ram Awtar Ray, He is the Guardianship
(Father) of Appellant XXXXX, R/V- Darahpur, P.S- Buxar (Ind.) Dist- Buxar

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Dr. Kamal Deo Sharma, Adv.

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

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CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL ORDER

4 01-09-2023

1. Heard learned counsel for the parties.

2. This appeal has been preferred against the order dated 20.09.2022 passed by the learned Court of A.D.J.-I-cum Special Judge, (SC/ST & Children Court), Buxar in connection with Child Case No.02 of 2022 (CIS -Cri. Case No. 05/2022) arising out of Buxar (Mahila) P.S. Case No. 66 of 2021 registered for the offence(s) punishable under Section(s) 341, 323, 506 and 376(D) of the Indian Penal Code and under Sections 4 and 6 of the POCSO Act whereby and whereunder the court concerned rejected the bail prayer of the appellant from which being aggrieved and dissatisfied, the instant appeal has been filed.

3. In respect of prayer for bail made by the appellant

under Section 101(5) of Juvenile Justive Act, it is submitted by learned counsel for the appellant that the FIR of the present matter was lodged after one month of the alleged occurrence and one similarly situated co-accused has been granted bail by a co-ordinate Bench of this Court vide order 06.12.2022 passed in Cr. Rev. No. 366 of 2022, despite the Social Investigation report of the said co-accused being against him and in the family of the appellant, his father and mother are ready to take care of the appellant and in this regard they are also ready to stand as a surety and furnish an undertaking/affidavit. Further submissions are that the appellant has been declared juvenile on 25.02.2022 and his age at the time of commission of the alleged occurrence has been assessed as 16 years 5 months and 18 days and in the present matter, he has been languishing in Observation Home since 08.02.2022. Learned counsel for the appellant has placed reliance upon the judgment of the Division Bench of this Court passed in case of **Lalu Kumar and Ors. Versus The State of Bihar reported in 2019 (4) PLJR 833** and referred the **para 87** of the said judgment which is reproduced as under : -

“Our irresistible conclusion, on dealing with the provisions prescribed under Section 12 of the Act of 2015, to answer the fourth question “Whether seriousness of the offence alleged is a

ground for rejecting the bail in case of a child in conflict with law?” is, thus, plain and simple. Seriousness of the offence alleged cannot be made a ground for rejecting bail in case of a child in conflict with law.”

4. Learned APP for the State has opposed the above-mentioned prayer for bail and submitted that there is serious allegation against the appellant and the Social Investigation report is also against him and the court below has rightly rejected his bail prayer.

5. Heard both the sides and perused the FIR, order impugned and the case diary. Though, against the appellant, there is serious allegation of having committed rape with the informant along with the co-accused and also videographed the alleged occurrence and thereafter, circulated the same and the Social Investigation report is also against him but considering his long custody period in Observation Home and also the fact that one similarly situated co-accused, who has also been declared juvenile, is on bail, this Court is inclined to accept his prayer **provisionally for the period of six months.** Accordingly, let the appellant named above 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 the learned A.D.J.-I-cum Special Judge, (SC/ST & Children Court), Buxar

in Connection with Child Case No.02 of 2022 (CIS -Cri. Case No. 05/2022) arising out of Buxar (Mahila) P.S. Case No. 66 of 2021 on the following condition :-

(i) Both the bailors will be father and mother of the appellant who shall file their undertaking before the learned court below to keep the appellant in their observation and after the lapse of provisional bail period i.e. 6 months, the learned court below shall call for Social Investigation report from the Probation Officer regarding conduct of the appellant and if his conduct is found satisfactory then the privilege, so granted, shall be confirmed but if any type of wrong conduct of the appellant is found then the learned court below shall take serious action against him by cancelling his bail bond.

6. In the result, the instant appeal stands allowed and the order impugned is hereby set aside.

(Shailendra Singh, J)

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