

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.4227 of 2023

Arising Out of PS. Case No.-5 Year-2023 Thana- MAHILA P.S. District- Banka

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Sujeet Kumar Son of Kailash Mandal R/o vill - Sangrampur, P.S. - Amarpur, Distt. - Banka. Under the care and guardianship of his mother namely Reena Devi, aged about 41 years, wife of Kailash Mandal, R/o vill - Sangrampur, P.S. - Amarpur, Distt. - Banka

... .. Appellant/s

Versus

1. The State of Bihar
2. Ruby Devi Wife of Chotu Mandal R/o Sangrampur, P.S. - Amarpur, Distt. - Banka

... .. Respondent/s

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Appearance :

For the Appellant/s : Md. Najmul Hodda, Advocate
For the Respondent/s : Mr. Syed Ashfaque Ahmad, APP

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CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

5 29-01-2024 1. Heard learned counsel appearing on behalf of the appellant/CICL and learned APP appearing on behalf of the State.

2. The present application is being preferred against judgment dated 03.08.2023 passed by learned Additional Sessions Judge-1 cum Children Court, Banka by which the learned Court refused to enlarge the petitioner on bail in case arising out of Mahila P.S. Case No. 05 of 2023 registered for the offence punishable under Sections 376, 323, 504, 506 & 120(B) of the Indian Penal Code and Section 4 of the POCSO Act.

3. The appellant/CICL, aged about 17 years on the alleged date of occurrence i.e. 23.12.2022, is named in F.I.R.,



and is in custody/observation home since 15.02.2023`.

4. The allegation against this appellant/CICL is to kidnap the minor daughter of informant aged about 16 years on the false pretext of marriage and also to commit illegal intercourse upon her.

5. Learned counsel appearing on behalf of the appellant/CICL submitted that as love affairs of appellant with minor daughter of informant was not accepted by the parents of victim, present false case was lodged, where victim out of her own sweet will accompanied appellant/CICL solemnized her marriage, established physical relations and remained in Punjab for considerable period of time. It is further pointed out that present F.I.R. was lodged with the delay of 45 days and as per statements of victim available under Sections 161 & 164 of the Cr.P.C., it can be gathered safely that she out of her own sweet will accompanied appellant/CICL for Punjab. It is further submitted that appellant/CICL is in custody for about a year, where trial is at initial stage and is not likely to conclude in the near future and on this score only appellant deserves bail. While concluding the argument, it is submitted that investigation of this case has been completed, for which, charge-sheet has already submitted.



6. Learned counsel appearing on behalf of the appellant/CICL submitted that mother of the juvenile appellant/CICL is ready to stand as a surety and furnish an undertaking that she will take care of the appellant/CICL and shall ensure his studies as well as that he would not fall in bad company and would take all possible care to connect him with the mainstream of the society.

7. Learned APP for the State while opposing the prayer for bail and submitted that victim specifically stated through her statement recorded under Section 164 of the Cr.P.C. against appellant/CICL as to commit rape upon her out of false pretext of marriage.

8. Having regard to the submission and materials showing that the appellant has been adjudged juvenile aged about 17 years approximately on the alleged date of occurrence, 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 appellant/CICL on bail, as also that appellant has remained in the Observation Home for about one year and his mother is ready to stand as a surety and furnish an undertaking that if released on bail he will take care of the petitioner and shall ensure that he does not fall in bad company



and, in case, the appellant indulges in any unlawful act, she 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.”*

9. On perusal of social investigation report vide order dated 20.06.2023 nothing adverse appears against appellant/CICL that he cannot join the mainstream of society. It appears from social investigation report that appellant/CICL is willing to continue his studies and he was trapped with present case by the parents of the victim.

10. In view of the aforesaid factual submissions as



present F.I.R. was lodged with the delay of 45 days, where allegation of rape was raised in the background of marriage and love affairs, accordingly, this court sets-aside the impugned order and directs release of the appellant/petitioner on bail on furnishing bail bond of Rs.10,000/- (Rupees Ten Thousand only) with two sureties of the like amount each to the satisfaction of learned Additional Sessions Judge-1 cum Children Court, Banka/concerned Court in connection with Mahila P.S. Case No. 05 of 2023.

11. One of the sureties should be the mother of the appellant/petitioner and she will also furnish an undertaking in terms stated here-in-above.

12. 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.), Banka, regarding conduct of the appellant. If found anything adverse against this appellant/petitioner, the same will also be reported to the Board for necessary action.

(Chandra Shekhar Jha, J.)

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