

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.4213 of 2023

Arising Out of PS. Case No.-25 Year-2019 Thana- MAHILA P.S. District- Siwan

Bijendra Yadav @ Bijendra Kumar Yadav Son Of Madan Ray Resident Of
Village - Bal Bangra, P.S. - Daraunda, District - Siwan, Bihar

... .. Appellant/s

Versus

1. The State of Bihar
2. Lakshmi Kumari Daughter Of Brij Ram Resident Of Village - Bal Bangra,
P.S. - Daraunda, District - Siwan, Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Prashant Kumar, Advocate

For the Respondent/s : Mr. Binay Krishna, Spl.P.P.

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

4 11-01-2024 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 28.03.2023 passed by learned Additional
Sessions Judge-1-cum (Children Court) Siwan in which the
learned Court refused to enlarge the petitioner on bail in case
arising out of Siwan Mahila P.S. Case No. 25 of 2019 registered
for the offence punishable under Section 376 (D) of the Indian
Penal Code and Sections 66(E) and 67(A) of the IT Act.



3. It is submitted by learned Spl.P.P. that respondent no.2 was informed in terms of order dated 20.12.2023 through concerned Superintendent of Police/local SHO, about the present Court proceedings, where respondent no. 2 is duly represented.

4. The appellant/CICL, aged about 17 years 02 months and 25 days on the alleged date of occurrence i.e. 26.04.2019, is not named in F.I.R., and is in custody/observation home since 01.05.2019.

5. The allegation against this appellant/CICL is to commit rape upon informant aged about 19 years alongwith other co-accused persons on 26.4.2019 at about 7:30 pm.

6. Learned counsel appearing on behalf of the appellant/CICL submitted that he has been falsely implicated with the present case for the reason as she objected her relation with accused, Shubham Kumar, by other accused persons including juvenile/CICL. It is submitted that it was normal scuffling where the mobile of informant was taken by co-accused persons and due to local disputes and differences present false case on the ground of caste based atrocities was lodged against accused persons including appellant/CICL. Learned counsel submitted that as per F.I.R. the allegation of



rape is only available against co-accused, Shubham Kumar but she completely took u-turn, while recording her statement under Section 164 of the Cr.P.C. by exonerating co-accused Shubham Kumar, from the allegation of rape as raised through F.I.R. and substituted other 4 co-accused persons including juvenile/CICL. It is submitted that appellant is in custody since 01.05.2019, wherein the co-accused having identical allegation namely Awadhesh Yadav @ Awadhesh Kumar Yadav, who has been assessed juvenile aged about 17 years 9 months and 1 day on the date of occurrence has already been granted bail by one of the learned Co-ordinate Bench of this Court through Criminal Appeal (SJ) No. 2257 of 2023 vide order dated 04.10.2023 and therefore on the ground of parity this appellant/CICL deserves bail.

7. Learned counsel appearing on behalf of the appellant/CICL submitted that father of the juvenile appellant/CICL is ready to stand as a surety and furnish an undertaking that he 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.

8. Learned APP for the State opposes the prayer for



bail. Learned APP has, however, not pointed out any adverse material from the social investigation report.

9. Having regard to the submission and materials showing that the appellant/CICL has been adjudged juvenile aged about 17 years 02 months and 25 days approximately on the alleged date of occurrence, no active participation of the appellant/CICL has been alleged 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 appellant/CICL on bail, as also that appellant has remained in the Observation Home for more than one year 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 appellant/CICL and shall ensure that he does not fall in bad company and, in case, the appellant/CICL 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.”

10. 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) Siwan/concerned Court in connection with Siwan Mahila P.S. Case No. 25 of 2019.

11. One of the sureties should be the father of the appellant/CICL and he 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.), Siwan, regarding conduct of the



appellant. If found anything adverse against this
appellant/CICL, the same will also be reported to the Board for
necessary action.

(Chandra Shekhar Jha, J.)

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