

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.684 of 2023

Arising Out of PS. Case No.-86 Year-2022 Thana- MAHILA PS District- Gaya

XXX Son of Indra Das @ Indar Das Resident of Village - Bar, P.S. - Sherghati, District - Gaya under the Guardianship of his Father Indra Das @ Indar Das, Aged About 46 Years, Son of Chandar Das, Resident of Village - Bar, P.S. - Sherghati, District - Gaya

... .. Petitioner

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Petitioner/s : Mr. Sudhir Kumar Sinha, Advocate

For the Respondent/s : Mr. Nirmal Kumar Sinha, APP

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

4 22-01-2024 Heard learned counsel for the petitioner and learned A.P.P. for the State.

2. Petitioner in the present application is seeking setting aside of the order dated 01.09.2023 passed by learned Special Judge (Children Court), Gaya in Cr. Appeal Juvenile No. 05 of 2023 arising out of Mahila P.S. Case No. 86 of 2022 registered under Sections 313, 376, 34 and 506 of the Indian Penal Code and Sections 4/6 of the Protection of Children from Sexual Offences (POCSO) Act whereby and whereunder the order dated 15.05.2023 passed by learned Principal Magistrate, Juvenile Justice Board, Gaya has been affirmed.

3. As per the prosecution story, on 30.06.2022 in the evening while the informant had gone to attend the call of nature, this petitioner is alleged to have established physical

relation with her due to which she became pregnant. It is alleged that petitioner's mother allegedly took the informant to a Doctor and made him abort the womb. It is further alleged that petitioner's mother has threatened the informant's family not to lodge case.

4. Learned counsel for the petitioner submits that the learned Juvenile Justice Board, Gaya has adjudged the petitioner a juvenile aged about sixteen years three months ten days, however, in the case diary it has come that he is aged about fifteen years.

5. Learned counsel submits that in this case the petitioner and the victim both are minor. The alleged occurrence is said to have taken place on 30.06.2022 and it is alleged that the victim girl was taken to a village quack on 22.09.2022 by mother of the petitioner and she was aborted and on way back to her home, the mother of the victim girl also met and she came to know about the alleged occurrence but no FIR was lodged immediately. In this case FIR was lodged on 13.10.2022. The petitioner is in judicial custody since 14.10.2022.

6. Learned counsel submits that at best it may be a case of love affair in which both the minors have got involved.

7. It is submitted that the social investigation report

and the social background report of the petitioner does not have any adverse remarks against him and the petitioner has no criminal antecedent. He comes from a very down trodden family and his parents earn their livelihood as daily wager. In these circumstances, the ratio of the 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** would apply and the petitioner would deserve privilege of bail.

8. Learned A.P.P. for the State has opposed this application. It is submitted that in course of investigation, Police has found the alleged occurrence true and has submitted a charge-sheet. Learned A.P.P. submits that in the given facts and circumstances of the case, the petitioner does not deserve privilege of regular bail.

9. Having regard to the facts of the case, taking note of the accusation and the judgment of the Hon'ble Division Bench of this Court in the case of **Lalu Kumar (supra)**, this Court is of the considered opinion that the seriousness of the allegations alone cannot be a ground to reject the prayer for bail of the petitioner. In the case of **Lalu Kumar (supra)**, the Hon'ble Division Bench has held 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.”

10. In this case, the petitioner has been adjudged sixteen years old whereas the victim girl is about seventeen years of age, the FIR has been lodged four months after the alleged occurrence and at least twenty one days after the mother of the victim came to know the alleged occurrence, moreover a charge-sheet has already been filed and the petitioner has remained in judicial custody for over one year, therefore this Court 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 Special Judge (Children Court), Gaya in connection with Mahila P.S. Case No. 86 of 2022.

11. One of the bailors of the petitioner would be the father of the petitioner who will furnish an undertaking that he will not allow the petitioner to come in contact with the victim girl and/or her family members and shall make endeavours to connect the petitioner with studies and mainstream of the society.

12. And further condition that the Probation Officer attached to the Juvenile Justice Board, Gaya shall keep vigil over the conduct of the petitioner and in case it is found that the petitioner is getting involved in any crime, the same will be reported to the nearest Police Station for appropriate action.

13. This application stands allowed.

(Rajeev Ranjan Prasad, J)

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