

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.683 of 2023

Out of PS. Case No.-357 Year-2022 Thana- DAUDNAGAR District- Aurangabad

RAHUL KUMAR son of Jitendra Mahto @ Jitendra Kumar under Guardian
ship of namely Jitendra Mahto @ Jitendra Kumar father of petitioner,
Village- Tarar Ps- Daudnagar Dist- Aurangabad

... .. Petitioner/s

Versus

1. The State of Bihar
2. Punam Kumara D/o- Shailesh Kumar, Village- Tarar Ps- Daudnagar Dist-
Aurangabad

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Yugal Kishore , Advocate Ms. Rupa Kumari, Advocate
For the State	:	Dr. Ajeet Kumar, APP

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

5 26-02-2024 The instant revision is directed against an order dated 1st September 2023, passed in Criminal Appeal No. 40 of 2023 by the Children's Court-cum-Additional Sessions Judge-Ist, Aurangabad, dismissing the appeal filed on behalf of the CICL. In the said appeal, argument was advanced especially for release of the CICL under the custody of his parents and he might be released from the protective umbrella of the observation home.

2. The CICL faced trial in connection with Daudnagar P.S. Case No. 357 of 2022 for the offence under Section 341/342/323/354/376/504/506 of the IPC read with Section 4 of Protection Of Children from Sexual Offences Act, 2012 (hereafter, described as the POCSO Act). The Juvenile Justice



Board found CICL guilty for committing such offence and convicted and sentenced him accordingly, directing the CICL to be sent to observation home for a period of three years. The CICL preferred an appeal against the said order which was dismissed, hence the instant revision. It is submitted by the learned advocate for the petitioner that on the date of the alleged occurrence the victim was aged about 16 years and the CICL was aged about 14 years 11 months and few days. The victim and the CICL are neighbors. There was a love affair between the victim and the CICL. Accordingly, both of them left their house and stayed for some days in another place. From the evidence on record, it was found that there was physical relation between the victim and the CICL. The CICL was convicted for committing offence under Section 4 of the POCSO Act. According to the learned advocate for the petitioner, the boy is not a seasoned offender. It is found from the judgment passed by the appellate court that due to acute poverty, he left his studies and has been working as a vegetable vendor. The entire incident is an outcome of a love affair. There was no criminal antecedent of the petitioner so, he may be released under the care and protection of his parents.

3 The learned advocate also refers to the last page of



the impugned order where the appellate court discussed about the report of the Probation Officer. It is observed by the appellate court that the Probation Officer, in his Social Investigation Report, disclosed that the appellant is a vegetable vendor and he helps his family from the earning as such and his behavior is satisfactory, therefore, the Probation Officer opined that the appellant might be handed over to his parents for his upkeep and fostering.

4. The learned advocate for the Opposite Party No. 02/victim on the other hand submits that the accused forcibly took away the victim on his motorcycle. He had kept her in a room under lock and key for 10 days. During those days, he committed rape upon the said girl. The specific act of the CICL shows his criminality and culpability to commit such offence.

5. At the end, learned advocate for the petitioner submits that the incident took place on 16th June 2022 and the victim lodged the information in the jurisdictional police station on 28th June 2022, therefore, there was a delay of 12 days in lodging of the FIR. On this learned advocate for the Opposite Party No. 2 submits that the victim was confined in a room by the petitioner from 16th June 2022 to 26th June 2022. She returned to her home on 27th June 2022 and lodged the



complaint on 28th June 2022. Thus, the victim did not get any opportunity to lodge the FIR prior to 28th June 2022.

6. Having heard the learned advocate for the petitioner and the learned advocate for the Opposite Party No. 2 and on perusal of the impugned order and other materials on record, this court is of the opinion that an offence of sexual assault upon a minor girl by another minor suggests aggravating factor of criminal offence. Rape or penetrative sexual assault is an offence which degrades and degenerates the basic humanity of a person. The offence that was committed by the CICL cannot be equated with a simple offence of assault or theft etc. When a girl is ravished by a minor boy, the court has every reason to presume that criminality is inherent in his mind and in order to satisfy his desire and ultimate lust, he committed such offence.

7. Considering the above aspect of the matter, I am not inclined to release the petitioner under the foster care of his parents. The instant revision is accordingly dismissed.

(Bibek Chaudhuri, J)

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