

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.722 of 2025

In
CRIMINAL REVISION No.32 of 2025

Arising Out of PS. Case No.-241 Year-2024 Thana- AAJAM NAGAR District- Katihar

Md. Musgar @ Musgar Ali S/O Md. Haider @ Haider Ali Resident of Village - Daniha (Dhaniya), P.S. - Azamnagar, Dist.- Katihar, under the guardianship of his mother namely Runi Khatoon, aged about 49 years, Female, Wife of Md. Haider @ Haider Ali, Resident of Village - Daniha (Dhaniya), P.S. - Azamnagar, Dist.- Katihar,

... .. Appellant/s

Versus

1. The State of Bihar
2. Kashish Fatma D/O Noor Alam Resident of Village - Azamnagar (Lodhni Tola), P.S. - Azamnagar, Dist.- Katihar,

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Md. Qumrul Hoda, Adv.
For the Respondent/s : Mr. Madan Kumar, APP

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

4 24-04-2025 The appellant is a minor. He has been implicated in G.R. Case No. 3688 of 2024, arising out of Azamnagar P.S. Case No. 241 of 2024, and produced before the learned Special Judge, Children Court, Katihar with an allegation of committing offence under Section 65(1), 351(2), 351(3), 3/5 of the B.N.S. and Section 4/6 of the POCSO Act.

2. Prayer for bail of the appellant was rejected on 25th November, 2024, considering the report of the Officer of Child Welfare Department, that the C.I.C.L. need proper education and good environment and the character of the C.I.C.L. is not



satisfactory on the basis of statement made by the neighbours.

3. Learned Advocate for the appellant refers to Annexure-2 of the instant memorandum of appeal being the medical examination report of the victim, where the Medical Officer, on ossification test, suggested that the age of the victim at the relevant point of time was between 18-19 years. Therefore, the learned Advocate on behalf of the appellant submits that the appellant cannot be booked for committing offence under Section 4/6 of the POCSO Act.

4. With regard to the allegation of rape, it is submitted by the learned Advocate for the appellant that the Medical Officer did not find any mark of injury on her body or around her private part. It is also not stated as to whether the hymen of the victim was ruptured or not.

5. The learned Advocate on behalf of the informant/respondent no. 2, on the other hand, refers to the Admit Card, issued by the Bihar School Examination Board, in the name of the victim. In the said Admit Card her date of birth is recorded as 4th August, 2008. Therefore, the victim was a minor on the date of occurrence. Moreover, the statement of the witnesses reveals that she was forcibly taken away on gun point by two miscreants from the road at about 6:30 P.M. and



wrongfully confined in a room of a local School. Thereafter, she was raped up to 2:00 A.M. at night and then she was released.

6. The incident narrated by the victim and the witnesses before the Investigating Officer and the medical report do not match with each other, because if a girl of 16 years old is repeatedly raped up to 2:00 A.M. at night against her will, there must be some injury in and around her private part as well as her body. But the Medical Officer did not find any type of injury on the person of the victim.

7. It is needless to say that by enacting Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015, bail of a C.I.C.L. is a statutory right. Section 12 mandates that persons, who are under the age of 18 years, thereby falling within the definition of “child” under the Juvenile Justice (Care and Protection of Children) Act, 2015 and are alleged to have committed an offence punishable under the penal laws, are required to be released on bail. Section 12 operates as an imperative mandate and this mandate is evidenced by the use of the word “shall which signifies that bail is to be granted as a Rule”.

8. In support of this observation, the Court refers to ***Sandeep Ayodhya Prasad Rajak, through his mother Shimla***



Ayodhya Prasad Rajak Vrs. State of Maharashtra, reported in *2022 SCC OnLine Bombay 1825*. In *Juvenile in Conflict with Law Vrs. State of Rajasthan and Another*, reported in *2024 SCC OnLine SC 2973*, the Hon'ble Supreme Court has emphasized on the pro-active role to be played by the Juvenile Justice Board to ensure that a child is entitled to be released immediately on bail after his produce before the Board.

9. Of course, proviso to Section 12 states that bail to a C.I.C.L. shall be refused, if the Court finds that the release is likely to bring that person into association with any known criminal. The word "known" is very important. It is for the prosecution to state at least the names of the criminals, who are known to the appellant. Secondly, there is nothing on record that if the appellant is released on bail, such release will expose the appellant to moral, physical and psychological danger or the order of bail would defeat the ends of justice.

10. Having heard the learned counsels for the parties and the reasons stated above, I am inclined to release the appellant on bail in connection with Azamnagar P.S. Case No. 241 of 2024, G.R. No. 3688 of 2024, on furnishing bail bond of Rs.10,000/- (Ten thousand) with two sureties of the like amount each, one of whom must be one of the parents of the appellant,



to the satisfaction of learned Juvenile Justice Board, Katihar, with further condition that if on bail, the jurisdictional Probation Officer shall remain in touch with the appellant and submit quarterly report to the learned Juvenile Justice Board, Katihar about the antecedent of the appellant.

11. If any adverse report is received, the Juvenile Justice Board is at liberty to cancel the order of bail of the appellant without further reference to this Bench.

12. The instant criminal appeal is allowed by the said order.

(Bibek Chaudhuri, J)

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