

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.179 of 2024

Arising Out of PS. Case No.-153 Year-2020 Thana- PANAPUR District- Saran

Sunil Kumar @ Bhuwar SON OF HARENDRA MAHTO RESIDENT OF
VILLAGE- LAGAUNI, PS- PANAPUR, DISTT- SARAN AT CHAPRA

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Vindhyachal Rai, Sr. Advocate Mr. Ram Binod Singh, Advocate
For the Respondent/s	:	Mr. Tarkeshwar Nath Thakur, APP

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

3 08-05-2025 Learned counsel for the petitioner is permitted to make necessary correction in this petition during course of the day.

2. This is an application under Section 102 of the Juvenile Justice (Care and Protection of Children) Act, 2015 challenging correctness, legality and propriety of the order dated 10.01.2023 passed by the learned Additional Sessions Judge-I-cum-Children Court, Saran at Chapra in Criminal (Juvenile) Appeal No.19 of 2021, arising out of Panapur P.S. Case No.153 of 2020 whereby and whereunder the learned Judge in Children Court affirmed the order passed by the Juvenile Justice Board, Saran with regard to the calculation of the age of the petitioner and held that the petitioner be tried before the Children Court.

3. Learned Senior Advocate on behalf of the petitioner first refers to the F.I.R. made by the victim on 11.10.2020, on



the basis of which, a case under Sections 341, 323, 376, 506 of the IPC and Section 4 of the POCSO Act was registered against the petitioner.

4. It is alleged by the informant that the petitioner induced the informant with some kind of promise for last one year and established illicit relationship with her. The said relationship was being continue, sometimes the petitioner used to threatened her so that she might not disclosed the incidence of physical relationship between the petitioner and the informant to her family members. On 10.10.2020 at about 07:00 p.m., when she was returning her house with her grandmother, the petitioner taking advantage of darkness pulled her hand and tried to take inside his house. When, she and her grand-mother protested, the petitioner assaulted them, then only she disclosed the entire incident to her family members and on the following day she lodged the FIR.

5. It is on record that the petitioner was initially produced before the Juvenile Justice Board, Saran at Chapra, the Board assessed the age of the petitioner as 16 years, 06 months, and 06 days on 02.12.2020. Thus, after determination of age, the Juvenile Justice Board held that the petitioner on the date of production was above 16 years and below 18 years and therefore, he is entitled to be tried before the Children Court.



6. The said order was challenged on behalf of the petitioner before the Children Court in Criminal (Juvenile) Appeal No.19 of 2021. The learned Special Judge Children Court, Saran at Chapra affirmed the order of the Juvenile Justice Board holding, inter-alia, that the Hon'ble Supreme Court in **Sri Ganesh Vs. State of Tamilnadu & Anr.**, reported in (2017) 3 SCC 280, (Criminal Appeal No.39 of 2017, arising out of SLP(Crl.) No. 9073 of 2015) held that if the allegations of prosecution that the offence under Section 376 of the IPC was committed on more than one occasion, in order to see whether the appellant was a juvenile or not, it is enough to see if he was juvenile on the date, when the last of such incident has occurred.

7. Both the Courts below held that the last of such incident occurred on 10.11.2020. The Courts below are factually wrong to hold that the victim girl was ravished by the petitioner on 10.10.2020. NO such incident took place on 10.10.2020 but as per the FIR the petitioner caught hold of the hand of the victim and pulled her and tried to take her inside his house. However, the victim and her grand-mother did not allow the petitioner to take her inside his house. Thus, it is clear that the FIR does not disclose the last date of occurrence punishable under Section 376 of the IPC in the FIR.

8. It is further submitted by the learned Senior



Counsel on behalf of the petitioner that the age of the victim was assessed during investigation by way of ossification test, the ossification test report revealed that the victim was aged about 19 years on the date of her examination. If the statement of the victim on the basis of which FIR was lodged by the police is accepted to be true on its face value, then on the first date of occurrence, the victim was aged about 18 years. According to the victim, physical relationship continued for one year. The victim did not raise any objection during such one year, if prima-facie shows that even if such incident took place it was a consensual relationship and at the time of commencement of such relationship, the petitioner was aged about 15 years and few months considering his date of birth, recorded in the Admission Register of his school.

9. Now it is trite that the Juvenile Justice (Care and Protection of Children) Act, 2015 is a socially beneficial legislation. It is not a penal law but established for all round development of juvenile, who are in conflict with law as well as in need of care and protection. The judicial precedence is consistent on the point that a case instituted against a juvenile is to be considered with the presumption of innocence. When from the FIR the Court does not find the last date of occurrence of rape, the ratio laid down in **Sri Ganesh (supra)** cannot be relied



on.

10. For the reasons stated above, this Court hold that on the date of commission of offence, the petitioner was below 16 years of age and he be tried before the Juvenile Justice Board, Saran at Chapra.

11. It is submitted by the learned Additional Public Prosecutor for the State that before passing any order, Case Diary and Lower Court Records ought to be looked into.

12. However, I do not find any reason to call for the Lower Court Records or Case Diary because the materials on records is sufficient to come to the above-finding.

13. For the reasons stated above, the orders passed in Criminal (Juvenile) Appeal No.19 of 2021 dated 10.01.2023 affirming the order dated 02.12.2020 passed by the learned Juvenile Justice Board, Saran at Chapra in Juvenile Enquiry No.315 of 2020 are set aside.

14. Accordingly, the revision application is allowed.

(Bibek Chaudhuri, J)

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