IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.194 of 2026

CNR No. BRHC010207122026

Arising out of PS. Case No.-106 Year-2025 Thana- MAHINDWARA District- Sitamarhi

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MMM S/o Md. Kudus Sah @ Md. Kudus @ Md. Kudrush R/o Village - Maheshafarakpur @ Mahesha Farrukhpur, P.S - Mahindwara, District - Sitamarhi under the guardianship of Nausi Khatoon aged about 52 Years, Gender - Female, W/o Md. Kudus Sah @ Md. Kudus @ Md. Kudrush, R/o Village - Maheshafarakpur @ Mahesha Farrukhpur, P.S - Mahindwara, District - Sitamarhi

... ... Petitioner/s

Versus

1. The State of Bihar
2. X W/o Late Md. Chand R/o Village - Maheshafarakpur @ Mahesha Farrukhpur, P.S - Mahindwara, District - Sitamarhi

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Santosh Kumar, Advocate
For the State : Mr. Md. Fahimuddin, APP
For the OP No. 2 : Mr. Subodh Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA

ORAL ORDER

5 27-10-2026 Heard learned counsel for the petitioner, learned counsel for the informant/opposite party no. 2 and learned Additional Public Prosecutor appearing on behalf of the State.

2. The instant criminal revision petition is directed against the order dated 16.01.2026 passed by learned District and Additional Sessions Judge-I-cum-Special Judge (Children Court), Sitamarhi in Criminal Appeal (JJB) Case No. 24 of 2025, whereby and

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whereunder the bail of the petitioner was rejected and the order dated 26.09.2025 passed by learned Juvenile Justice Board, Sitamarhi in Case No. 2157 of 2025 in connection with Mahindwara P.S. Case No. 106 of 2025 registered under Sections 65(2) and 3(5) BNS and Sections 4 and 17 of POCSO Act, 2012, was affirmed.

3. Briefly stated facts of the case are that the informant/opposite party no. 2 instituted Mahindwara P.S. Case No. 106 of 2025 on 19.06.2025 under Section 65(2) and 3(5) BNS and Section 4 and 17 of POCSO Act with allegation that petitioner committed rape with her seven years old daughter on 14.06.2025. The petitioner has been taken into custody on 26.07.2025 and the learned Juvenile Justice Board assessed the age of the petitioner and found him to be child in conflict with law considering his date of birth as 29.07.2011.

4. The petitioner moved before the learned Juvenile Justice Board, Sitamarhi for grant of bail but the prayer for bail of the petitioner was rejected on 26.09.2025. Feeling aggrieved by the said order the

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petitioner availed the remedy of appeal which was dismissed *vide* order dated 16.01.2026 in Case No. 2157 of 2025 by the learned District and Additional Sessions Judge-I-cum-Special Judge (Children Court), Sitamarhi. Against the aforesaid two orders, the petitioner has come before this Court in the present revision petition.

5. Learned counsel for the petitioner submits that the petitioner is innocent and has falsely been implicated in this case. The FIR was instituted after delay of five days without any satisfactory explanation. The learned subordinate courts did not consider this fact and also failed to appreciate that bail to a child in conflict with law is mandatory under Section 12 of the Juvenile Justice Act and it could be denied only on certain grounds like child in conflict with law falling in company with criminal elements or it may result in causing mental, physical or psychological danger to such child or it would defeat the ends of justice but none of these ingredients are present in the instant case. The social investigation report is favourable to the petitioner as it has been

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observed that prior to the aforesaid occurrence, some dispute arose between two families and in acrimonious atmosphere the petitioner was made accused and if his involvement is not found in the occurrence, the petitioner should be allowed to continue his studies as he had been studying in Class-IX when he was taken into custody. Learned counsel further submits that the social background report merely mentions that the petitioner should be kept in observation home in special ward without mentioning any reasons for the same. Learned counsel further submits that gravity/serious nature of offence could not be a ground for denial of bail but these facts were not considered by the learned subordinate courts. Learned counsel also submits that the learned Juvenile Justice Board relied on the report of the counsellor but the said report could not be the basis for rejection of prayer of bail of the petitioner. The petitioner is in custody since 26.07.2025 and is having clean antecedent.

6. Learned Additional Public Prosecutor for the State as well as learned counsel for the informant/opposite party no. 2 has vehemently

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opposed the prayer for bail of the petitioner. Learned counsel appearing on behalf of the informant/opposite party no. 2 contends that the petitioner committed rape with the child aged about seven years and does not deserve to be enlarged on bail. Learned counsel further submits that the petitioner is named in the FIR and there is specific allegation which is quite serious and heinous in nature as well. The learned Juvenile Justice Board took into consideration the fact that the counselling report shows that the petitioner used to watch pornographic material and keeping outside observation home would not be safe for him and there is apprehension of moral and psychological danger to the child and his release would defeat the ends of justice.

7. I have given my thoughtful consideration to the rival submissions advanced by the parties and perused the record.

8. Section 12 of the Juvenile Justice Act provides that a child in conflict with law, notwithstanding anything contained in the Code of Criminal Procedure and any law for the time being in

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force, should be released on bail with or without surety, however, this principle is subject to certain conditions. Such child would not be released on bail unless it is apparent that on release, the said child would come in contact with criminal elements or there was danger, moral, physical and psychological to the child or the release would defeat the ends of justice. Therefore, the release of child on bail in any offence is matter of right with certain exceptions. Further, gravity of seriousness of offence have no bearing on grant of bail to the child.

9. Further, Section 3(xii) of the Juvenile Justice Act, 2015 shows the beneficial nature of Act and the main object is repatriation and rehabilitation of the child. Further, institutional care has been held to be a last resort and the principle of repatriation, rehabilitation and restoration in juvenile justice system has been held to be right to child in conflict with law and such child is to be re-united with the family at the earliest and is to be restored to earlier social, economic and cultural status.

10. Keeping the beneficial nature of the

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juvenile justice in mind, the facts of the present case are to be considered. In the facts of the case, nothing has been brought on record to show that the release of the petitioner would bring him in association with known criminals or his release would expose him to moral, physical or psychological danger or it would defeat the ends of justice. The counselling report has been referred to stress that release of the petitioner might result the exposure of the petitioner to moral, physical or psychological danger but there is no substantive material to support such inference. Moreover, considering the fact that it has been observed that the petitioner used to watch pornographic material in company of one of his friends but it is a moot question whether he would continue to do so in future also and the same cannot be inferred from such report.

10. Therefore, having regard to all these facts and circumstances, I am of the considered opinion that the order dated 16.01.2026 passed by learned District and Additional Sessions Judge-I-cum-Special Judge (Children Court), Sitamarhi in Criminal Appeal (JJB)

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Case No. 24 of 2025, whereby and whereunder the bail of the petitioner was rejected and the order dated 26.09.2025 passed by learned Juvenile Justice Board, Sitamarhi in Case No. 2157 of 2025 in connection with Mahindwara P.S. Case No. 106 of 2025 registered under Sections 65(2) and 3(5) BNS and Section 4 and 17 of POCSO Act, was affirmed, could not be sustained and hence, are, set aside.

11. Let the petitioner, a child in conflict with law, be released 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 Juvenile Justice Board, Sitamarhi/concerned Court in connection with in Case No. 2157 of 2025 in connection with Mahindwara P.S. Case No. 106 of 2025, subject to the following conditions:-

(i) One of the bailors will be the parents of the petitioner and the other bailor will also be relative of the petitioner having no criminal antecedent and shall give undertaking that he/she shall keep proper care and

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upkeep of the petitioner.

(ii) The petitioner shall remain present before the Board on each and every date of trial of the case fixed by the Board.

12. Accordingly, the present revision petition is allowed.

(Arun Kumar Jha, J)

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