

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No 180 of 2021

Arising Out of PS. Case No.-130 Year-2016 Thana- BHAGWANPUR District- Vaishali

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BISHNU KUMAR @ BISHNU PASWAN SON OF LATE MISHRI
PASWAN Resident of Village - Muzaffarpur Malahi, PS - Bhagwanpur, Distt
- Vaishali.

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr Ranjan Kumar Singh, Advocate
For the Respondent/s : Ms Pushpa Sinha, APP

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CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 22-03-2021

Heard learned counsel appearing for the petitioner and
learned Additional Public Prosecutor appearing for the State.

2 This revision petition has been preferred against the
order dated 04.09.2017 passed by the learned Principal Magistrate,
Juvenile Justice Board, Vaishali at Hajipur and order dated
06.12.2017 passed by the Additional Sessions Judge I -cum-
Special Judge, Vaishali at Hajipur in Criminal Appeal No 85 of
2017 arising out of Bhagwanpur Police Station (for brevity, *PS*)
Case No 130 of 2016 registered under Sections 363, 302, 376D,
201 of the Indian Penal Code (for brevity, *IPC*) and Sections 4, 6,
8 and 10 of Protection of Children from Sexual Offences Act.

3 The above stated Bhagwanpur PS Case No 130 of
2016 was initially registered against unknown for the offences
punishable under Section 363 of IPC on the basis of written report
of the informant, who claimed that his grand-daughter aged about



4 years was missing since 05.08.2016. Subsequently, the dead body of victim was recovered after 3-4 days from behind the *Bathan* of the petitioner and, accordingly, Section 302 and other sections were added. The prosecution witnesses as well as police claimed that the petitioner as well as co-accused Kundan Kumar were apprehended and confessed their guilt disclosing that they not only raped, but also committed murder of deceased.

4 The petitioner was remanded in the above stated case on 10.08.2016 and after remand, he claimed himself to be juvenile. The Juvenile Justice Board conducted the inquiry to ascertain the age of the petitioner and subsequently, the petitioner was found below 18 years of age, but taking the seriousness and nature of the offence, the Juvenile Justice Board referred the matter to the Children Court for trial. The petitioner moved before the Juvenile Justice Board for bail, but his prayer for bail was rejected by the Juvenile Justice Board vide order dated 04.09.2017 and subsequently, the petitioner preferred Criminal Appeal No 85 of 2017 for grant of bail, but the appeal was too rejected by the Additional Sessions Judge I -cum- Special Judge, Vaishali at Hajipur vide order dated 06.12.2017.

5 Learned counsel appearing for the petitioner submits that there is no cogent evidence against the petitioner except



suspicion as well as so called confessional statement that too, before the police. He further submits that the petitioner has been implicated in this case due to village politics and land dispute and moreover, petitioner does not have any criminal antecedent and there is nothing on the record to show that the release of the petitioner shall bring him into the association of known criminals nor there is anything to show that the release of the petitioner shall expose morally, physically or psychologically.

6 The learned Additional Public Prosecutor refuted the above stated submissions pointing out that the dead body of victim was recovered from behind the *Bathan* of the petitioner and when the sniffer dog was pressed in service, the said sniffer dog entered into the *Bathan* of the petitioner and subsequently, co-accused Kundan Kumar as well as this petitioner were arrested and they confessed their guilt.

7 Having heard the contentions of the parties, I went through record as well as case diary. Admittedly, the case was initially lodged against unknown persons meaning thereby, none had seen the petitioner and his associate taking away the victim from her *Bathan*. The perusal of entire case diary goes to show that not a single prosecution witness claimed to have seen the petitioner along with victim girl and except the so called



confessional statement of petitioner and co-accused that too before police as well as suspicion, there appears to be nothing against the petitioner, who is in jail custody for more than four years and seven months without any substantive progress in his trial. Co-accused Kundan Kumar has already been granted bail by this Court in Cr Revision No 1204 of 2018 on 22.05.2020.

8 Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for brevity, *the Act*) makes the provision of bail to a child in conflict with law. The bail of a child in conflict with law is a rule and rejection is an exception. No doubt the proviso of Section 12 of the Act says that the child in conflict with law shall not be released on bail, if there is likelihood to bring the aforesaid child conflict with law into association with known criminals or expose him to moral, physical or psychological danger or the person's release would defeat the ends of justice.

9 In the present case, there is nothing on the record to show that the release of petitioner shall bring him into the association of the known criminals. Admittedly, the petitioner does not have any criminal antecedent nor there is anything to show that prior to his remand, he was in association with known criminals. Similarly, also there is nothing on the record to show that the release of the petitioner shall expose him morally, physically or



psychologically in danger. So far ends of justice is concerned, the petitioner is admittedly cooling his heels in observation home for more than four years and seven months. This Court's attention has also been drawn towards the order dated 22.05.2020 passed by this Court in Cr Revision No 1204 of 2018 whereby co-accused Kundan Kumar has been granted bail taking note of the fact that only five prosecution witnesses out of sixteen could be examined. It is submitted by the petitioner's counsel that there is hardly any progress at the trial thereafter, as the Courts have been functioning in a very limited manner on account of COVID – 19 Pandemic. Therefore, the aforesaid fact goes to show that in view of Section 12 of the Act, the petitioner should be released on bail.

10 No doubt, serious allegation of rape and murder has been levelled against the petitioner and other accused, but in course of hearing, learned counsel for the petitioner drew my attention towards post mortem report of deceased and submits that the post mortem report of deceased negates the story of rape.

11 Considering the aforesaid facts and circumstances as well as submissions of the parties, in my view, this revision petition does have merit and should be allowed.

12 Accordingly, the impugned order dated 04.09.2017 passed by the learned Principal Magistrate, Juvenile Justice Board,



Vaishali at Hajipur and order dated 06.12.2017 passed by the Additional Sessions Judge I -cum- Special Judge, Vaishali at Hajipur in Criminal Appeal No 85 of 2017 arising out of Bhagwanpur PS Case No 130 of 2016 are hereby set aside. The petitioner is directed to be released on bail on his furnishing bonds of Rs10,000/- (Rupees Ten Thousand) with two sureties of the like amount each to the satisfaction of the learned Additional Sessions Judge I -cum- Special Judge, Vaishali at Hajipur in connection with Criminal Appeal No 85 of 2017 arising out of Bhagwanpur PS Case No 130 of 2016, subject to condition that one of the sureties must be mother of the petitioner, who shall give an undertaking before the trial Court that she shall keep strict vigil over the activities of the petitioner and shall produce him before the trial Court whenever and wherever is required by the trial Court.

13 In the aforesaid manner, this revision petition stands disposed of.

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	23.03.2021
Transmission Date	23.03.2021

