

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. Revision No. 03 of 2024

Mohit Kumar @ Mohit Mahli, C/o Ramnath Mahli, aged about 16 years, R/o village Bhandra, P.O. and P.S.-Bhandra, District-Lohardaga represented through his father Ramnath Mahli aged about 39 years S/o Ganshu Mahli, R/o village Bhandra, P.O. & P.S. Bhandra, District-Lohardaga.

Versus

The State of Jharkhand Opp. Party

CORAM : HON'BLE MR. JUSTICE SUBHASH CHAND

For the Petitioner : Mr. Altamash Khan, Advocate
For the State : Mr. Anup Pawan Topno, A.P.P.

Order No. 05/ dated 02.08.2024

Learned Counsel Mr. Altamash Khan on behalf of petitioner and on behalf of the State, learned A.P.P. are present.

2. This Cr. Revision has been directed on behalf of petitioner- Mohit Kumar @ Mohit Mahli against the order dated 02.08.2023 passed by the learned Addl. Sessions Judge-I-cum-Special Judge, Children Court, Lohardaga in Cr. Appeal No. 55 of 2023 whereby and whereunder the learned Addl. Sessions Judge-I-cum-Special Judge, Children Court, Lohardaga has rejected the regular bail of the petitioner and affirmed the order dated 01.06.2023 passed by the learned Principal Magistrate, Juvenile Justice Board, Lohardaga in Misc. Cr. Application No. 851 of 2023, arising out of Bhandra P.S. Case No. 10 of 2023, registered under Sections 363/376DA/506 of the Indian Penal Code and Section 6 of

POCSO Act wherein the prayer for bail of the petitioner was rejected.

3. The brief facts leading to this Cr. Revision are that the F.I.R. was lodged on behalf of both the victims with these allegations that on 16.02.2023 music and dancing was going on in Dhumkuriya ground of the village. The victim along with her friend had also gone to watch the dance. At 9 O' clock in the night accused-Mohit dragged her friend and Roshan dragged her to an isolated place where both had committed rape upon both the victims respectively and in the morning at 5 O' clock both the victims were set free. 3 days ago, the accused Roshan, Dilip, Shivam had also raped her and had criminally intimidated not to disclose in regard to the occurrence. On this written information case crime No.10 of 2023 was registered under Sections 363/376DA/506 of the Indian Penal Code and Section 6 of POCSO Act against the accused Roshan, Mohit, Dilip and Shivam.

4. The I.O. conducted the investigation and in para 5 of the case diary restatement of victim-X and in para 6 of the case diary the restatement of another victim-Y were recorded and both the victims reiterated the allegations as made in the F.I.R. In para 127 of the case diary, the age of one victim-X is shown 12 to 13 years while the age of another victim-Y is shown 12 to 13 years on the basis of radiological examination.

In para 140 & 141 of the case diary the Doctor had opined that the sexual assault cannot be ruled out against both the victims. Statement under Section 164 of Cr.P.C. was also recorded of both the victims in which they have also corroborated the prosecution story.

5. In Social Investigation Report of the present petitioner nothing adverse is shown against him rather his attitude towards his friends, teachers and neighbours is shown positive and no criminal antecedent of the C.C.L. is shown.

6. The learned Counsel for the petitioner has submitted that the statement of both the victims are contradictory to the contents of the F.I.R. which was lodged by them jointly. In Social Investigation Report of the C.C.L. nothing is adverse against him and the learned J.J.Board and the learned Appellate Court have not taken into consideration the Social Investigation Report of the petitioner.

7. The learned A.P.P. opposed the contentions made by the learned Counsel for the petitioner.

8. **It is the settled law that the bail application of a juvenile has to be disposed of taking into consideration Section 12 of J.J. Act, 2015 wherein it is provided that the bail application of a juvenile has to be allowed except the circumstances as shown in proviso of section 12 of the J.J.Act. While disposing of the bail application of juvenile**

the gravity or nature of the offence cannot be taken into consideration. As such the bail application of a juvenile is governed under Section 12 of the J.J. Act, 2015.

9. **Section 12** of the **Juvenile Justice (Care and Protection of Children) Act, 2015** reads as under:

Section 12. Bail to a person who is apparently a child alleged to be in conflict with law.-(1) When any person, who is apparently a child and is alleged to have committed a bailable or non-bailable offence, is apprehended or detained by the police or appears or brought before a Board, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, be released on bail with or without surety or placed under the supervision of a probation officer or under the care of any fit person:

Provided that such person shall not be so released if there appears reasonable grounds for believing that the release is likely to bring that person into association with any known criminal or expose the said person to moral, physical or psychological danger or the person's release would defeat the ends of justice, and the Board shall record the reasons for denying the bail and circumstances that led to such a decision.

(2) When such person having been apprehended is not released on bail under sub-section (1) by the officer-in-charge of the police station, such officer shall cause the person to be kept only in an observation home [or a place of safety, as the case may be,] in such manner as may be prescribed until the person can be brought before the Board.

(3) When such person is not released on bail under sub-section (1) by the Board, it shall make an order sending him to an observation home or a place of safety, as the case may be, for such period during the pendency of the inquiry regarding the person, as may be specified in the order.

(4) When a child in conflict with law is unable to fulfil the conditions of bail order within seven days of the bail order, such child shall be produced before the Board for modification of the conditions of bail.

10. Though both the victims have corroborated the prosecution story and same is also supported with medical evidence yet taking into consideration the Social Investigation Report of the petitioner-juvenile there is nothing therein as to expose him to psychological, social or physical danger and further nothing is in Social Investigation Report that he would come in association of known criminals if released on bail.

11. In view of the above, this Cr. Revision is hereby allowed. The impugned order passed by the learned J.J. Board and the order passed by the learned Appellate Court are set aside.

12. Let the child in conflict with law be released on bail on furnishing bail bond of **Rs. 25,000/- (Rupees Twenty Five Thousand)** and two sureties of the like amount each to the satisfaction of the learned Principal Magistrate, Juvenile Justice Board, Lohardaga in Bhandra P.S. Case No. 10 of 2023, corresponding to G.R.No. 211 of 2023, which are to be furnished on behalf of the guardian of the child in conflict with law.

13. The guardian of the juvenile is also directed to give an undertaking that he will keep vigil eye upon the juvenile and will control him from coming in association of known criminals.

(Subhash Chand, J.)

P.K.S