

IN THE COURT OF A.D.J.-1st-CUM-SPECIAL JUDGE
(SC/ST & CHILDREN COURT), BUXAR

Child Case No.- 02/2022

(CIS – Cri. Case – 05/2022)

[Arising out of Buxar (Mahila) P.S. Case no.- 66/2021]

Child In conflict with Law "R"

(As per mandate of Section 74 of J.J. Act Child In Conflict With Law
will be addressed as CICL "R" hereinafter, though his name has been
mentioned in the bail petition)

Vs

State of Bihar

Ld. Special P.P. :- Shri Md. Aziz Abbas (Spl. P.P.)

Ld. Counsel for the Defence :- Shri Kripa Shankar Rai (Advocate)

Present :- SANDIP SINGH,
A.D.J.- 1st-Cum-Special Judge,
(SC/ST & Children Court),
Buxar

Date of Order :- 20-09-2022

ORDER

1- The present bail application has been preferred u/s- 12 of the Juvenile Justice (care and protection of children) Act, 2015 in connection with child case no. 02/2022 arising out of Buxar (Mahila) P.S. case no. 66/2021 registered u/s- 341, 323, 506, 376 (D) of I.P.C. and 4/6 POCSO Act 2012.

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2- The prosecution case in brief is that F.I.R. has been instituted on the written application of the informant / victim aged about 15 yrs., alleging therein that on 19.07.2021, she went to take tuition in the adjacent village- Gangaura, and when she was coming after taking the tuition class then at about 9 am. the F.I.R. named accused person including aforesaid CICL "R" intercepted her and by giving threatening offered her for taking selfi from mobile with them and thereafter they forcibly took her in the nearby shrub and raped her on turn. It is also alleged that they made a video clip for alleged occurrence and by blackmailing they again tried to call her for committing offence, then she informed to her parents. Thereafter the instant case was lodged and after investigation charge-sheet was filed against CICL "R" u/s- 341, 323, 504, 506, 376 (D) of I.P.C. and 4/6 POCSO Act 2012.

3- The CICL "R" claimed as juvenile and therefore his record was separated and sent before the J.J.B., Buxar for trial. The record of the case was received before J.J.B. Buxar on 08.02.2022 and after that the J.J.B., Buxar declared him Juvenile on dated 25.02.2022. Thereafter on the basis of preliminary assessment of the CICL "R" the record has been sent before this court for trial u/s- 18(3) of the J.J. Act 2015. Accordingly the record of this case received in this court on 25.03.2022 and it was registered as child case 02/2022. Thereafter the instant bail has been file on behalf of the CICL "R" on dated 30.05.2022

4- Learned counsel for the CICL "R" submitted that he is quite innocent and falsely implicated in this case. There is no any bail petition was filed earlier on behalf of CICL "R" either before this court or Hon'ble court except this instant petition. The petitioner has been

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remanded in this case merely on suspicion. It is also submitted that the petitioner has been declared Juvenile. The charge-sheet has been submitted u/s- 341, 323, 504, 506, 376 (D) of I.P.C. and 4/6 POCSO Act 2012. There is no any specific allegation against the petitioner and he is a student. The parents are ready to give undertaking to protect their son from bad company and produce their son before this court on each and every date.

On the other hand learned special P.P. for the state submitted that there is serious allegation against the CICL "R" for committing heinous crime and he has also confessed his guilt during investigation, which is mentioned in paragraph no. 28 of case diary. Moreover there is one other criminal case registered against him therefore there is reasonable grounds for believing that the release is likely to bring CICL "R" into association with known criminal and expose him to moral, physical or psychological danger and same will defeat the end of justice.

5- Now, for consideration of the bail petition of CICL "R" it is apposite to reproduce the extract of Section 3 and 12 of J.J. Act, 2015:-
“Section 3(i), (iv), (vi) (xii), (xiii). General Principles to be followed in administration of Act:-

(i) Principle of presumption of innocence :- Any child shall be presumed to be an innocent of any malafide or criminal intent up to the age of eighteen years.

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(iv) Principle of best interest :- All decisions regarding the child shall be based on the primary consideration that they are in the best interest of the child and to help the child to develop full potential.

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(vi) Principle of safety :- All measures shall be taken to ensure that the child is safe and is not subjected to any harm, abuse or maltreatment while in contact with the care and protection system, and thereafter.

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(xii) Principle of institutionalisation as a measure of last resort :- A child shall be placed in institutional care as a step of last resort after making a reasonable inquiry.

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(xiii) Principle of repatriation and restoration :- Every child in the Juvenile Justice System shall have the right to be re-united with his family at the earliest and to be restored to the same socio-economic and cultural status that he was in, before coming under the purview of this Act, unless such restoration and repatriation is not in his best interest.

Whereas -

“Section 12(1) of the Juvenile Justice (Care and Protection of Children) Act, 2015, (hereinafter referred as J.J. Act) also states that, 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 :

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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 end of justice, and the board shall record the reasons for denying the bail and circumstances that led to such decision.

x x x

6- Hon'ble Patna High Court also in the case of Lalu Kumar @ Lalbabu @ Lallu Vs State of Bihar, reported in 2019(4)833, (para-84) while explaining Section 12 of J.J. Act, 2015 laid down the following principle as stated in para 84 of the Judgment -

Para 84 “While interpreting Section 12, the Board is duty bound to be guided by the fundamental principles enumerated in Section 3 of the Act of 2015, specially the principles of 'best interest', 'repatriation' and 'restoration' of child. The fundamental principles in Section 3(xii) provides that a child shall be placed in institutional care as a step of last resort after making a reasonable inquiry. The gravity and nature of the offence are immaterial for consideration of bail under the Act of 2015. As per Section 12 of the Act of 2015, an application for bail is not decided by reference to classification of offences, as bailable or non-bailable under the Cr.P.C. All persons alleged to be in conflict with law and apparently a child when apprehended must be released except in the following three circumstances.

When there is reasonable ground for believing that :-

- (i) The release is likely to bring that person into association with any known criminal;

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- (ii) The release is likely to expose the said person to moral, physical or psychological danger; and
- (iii) The release would defeat the ends of justice.”

7- Hence, having heard the rival submission of Ld. Special P.P. and Ld. counsel for CICL "R" and from perusal of case record, including the Social Investigation Report it is found that there is statement in the S.I.R. of CICL "R" that he has bad character and moreover there is adverse remark against the CICL "R" and he is also leaving in a bad company. Therefore, in the given circumstances there is every chance for the CICL "R" that his release would likely to bring him into association with other known criminals or expose him to moral, physical or psychological danger and his release would also defeat the end of justice. Hence the prayer of bail of CICL "R" is hereby rejected.

8- It is made clear that nothing in this order shall be considered to be expression of opinion on the merits of the case.

Dictated and corrected by me -

Sd/-

(SANDIP SINGH)

Addl. District & Sessions Judge- 1st

-Cum-Special Judge

(SC/ST & Children Court), Buxar

Date : 20.09.2022