
(2003) 05 PAT CK 0064

In the Patna High Court

Case No : Criminal Miscellaneous No. 23119 of 2002

Mukti Narain Prasad

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

Date of Decision : 02-05-2003

Acts Referred:

Penal Code, 1860 (IPC) — Section 376

Citation : (2003) 3 PLJR 53

Hon'ble Judges : M.L. Visa, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

M.L. Visa, J.—This application by Petitioner has been filed for cancellation of bail granted to opposite party No. 2 by order dated 02.07.2002 passed by learned Sessions Judge, West Champaran at Bettiah in criminal appeal No. 17 of 2002.

2. The case of Petitioner, in short, is that opposite party No. 2 committed rape on his daughter Sita Kumari aged about six years on 27.04.2002 and when his another daughter Laxmi Kumari went to Mahua Chowk in search of victim Sita, she found Sita weeping near the shop of opposite party No. 2 and her pant was stained with blood and she also saw opposite party No. 2 wiping off blood from floor and he fled away on seeing Laxmi. According to Petitioner, on the basis of his Fardbayan, a case u/s 376, Indian Penal Code was registered against Petitioner who surrendered on 12.06.2002 in the Court of learned Chief Judicial Magistrate, Bettiah and his prayer for bail was rejected. Thereafter, opposite party No. 2 preferred an appeal before the learned Sessions Judge, West Champaran at Bettiah against the order rejecting his prayer for bail and his appeal was numbered as criminal appeal No. 17 of 2002 which was heard and allowed by the learned Sessions Judge, West Champaran at Bettiah who granted bail to opposite party No. 2 observing that opposite party No. 2 appears to be aged about not more than fifteen years. According to Petitioner, opposite party No. 2 is not a minor boy and he is aged about twenty one years and neither any

school certificate was filed on his behalf nor any Medical Board was constituted for assessing his real age and learned Chief Judicial Magistrate, Bettiah has assessed the age of opposite party No. 2 as fifteen years only on the basis of his physical appearance which is not the basis of assessing the age of any person and during investigation, witnesses examined, supported the case of prosecution against opposite party No. 2. The further case of Petitioner is that learned Sessions Judge, West Champaran, Bettiah has wrongly granted bail to opposite party No. 2 without ordering to constitute a Medical Board to assess the real age of opposite party No. 2. Petitioner has prayed for cancellation of bail granted to opposite party No. 2.

3. Notice to opposite party No. 2 was issued who has appeared through his lawyer who has opposed the prayer of Petitioner.

4. The only grievance of the Petitioner is that opposite party No. 2 has been granted bail by learned Sessions Judge, West Champaran at Bettiah considering his age as less than fifteen years whereas opposite party No. 2, in fact, is aged about twenty one years. About the averment of Petitioner that opposite party No. 2 is aged about twenty one years is against the statement given in the Fardbayan of Petitioner where age of opposite party No. 2 has been stated as of twenty years. Notwithstanding this fact, the impugned order shows that learned Sessions Judge, Bettiah after finding that in the order of learned Chief Judicial Magistrate, the age of opposite party No. 2 was stated not more than fifteen years and also after observing that opposite party No. 2 was sent to Remand Home, he granted bail to opposite party No. 2. The learned Sessions Judge, Bettiah, in his impugned order, has clearly stated that opposite party No. 2 is not a declared juvenile but still he granted bail to him considering the facts stated above. So, it is clear that when opposite party No. 2 was produced before Chief Judicial Magistrate, Bettiah, his age was assessed not more than fifteen years and, accordingly, he was sent to Remand Home. Opposite party No. 2 has, admittedly, not been declared juvenile and, therefore, grievance of the Petitioner that no Medical Board was constituted for assessing the real age of Petitioner, has got no relevance in the present case. Prayer of Petitioner is for cancellation of bail granted to opposite party No. 2 and impugned order shows that bail to opposite party No. 2 has been granted not only on the ground that his age has been assessed by lower Court as not more than fifteen years and he was sent to Remand Home. Once bail has been granted to a person, it can be cancelled only on other grounds such as he is tampering with evidence, he will abscond causing delay in trial because of his absence, his giving threatening to witnesses etc. If Petitioner has got any grievance that opposite party No. 2 is not a juvenile and his trial should not be held under the provisions of Juvenile Justice Act, he can very well raise this issue before the Court below. For the present, I do not find any ground for cancelling the bail granted to opposite party No. 2 by learned Sessions Judge, Bettiah who has granted him bail considering the fact that when he surrendered before the Court below, his age was assessed by Court below and he was found aged fifteen years and he was sent to Remand Home.

5. I, therefore, find no ground in the application of Petitioner for cancelling the bail of opposite party No. 2. This application stands dismissed.