

(2023) 11 JH CK 0053
In the Jharkhand High Court
Case No : Criminal Revision No. 646 Of 2022

Ram Oraon And Others

APPELLANT

Vs

State Of Jharkhand And Others

RESPONDENT

Date of Decision : 28-11-2023

Acts Referred:

Indian Penal Code, 1860 — Section 34, 376DA
Protection Of Children From Sexual Offences Act, 2012 — Section 4, 6
Code Of Criminal Procedure, 1973 — Section 164
Juvenile Justice (Care And Protection Of Children) Act, 2015 — Section 12

Citation : (2023) 11 JH CK 0053

Hon'ble Judges : Subhash Chand, J

Bench : Single Bench

Advocate : Praveen Shankar Dayal, Nivedita Kundu, Saurabh Kumar, Shailesh Kumar Sinha

Final Decision : Allowed

Judgement

Subhash Chand, J

1. Learned counsel for the petitioners and learned counsel for the State are present.
2. This Criminal Revision has been preferred on behalf of the petitioners against the order dated 13.04.2022 passed by the learned District & Additional Sessions Judge-I, Lohardaga cum Special Judge, (Children Court), Lohardaga in Criminal Appeal No.11 of 2022, whereby the appeal was dismissed and affirmed the order dated 05.03.2022 passed by the learned Principal Magistrate, Juvenile Justice Board, Lohardaga in connection with Bhandra P.S. Case No.05 of 2022 registered under Section 376DA/34 of the Indian Penal Code and under Section 4/6 of the POCSO Act, wherein the bail application of both the juveniles was rejected.
3. Learned counsel for the petitioners has submitted that both the petitioners were 14 years old on the date of occurrence, their bail application was rejected

by the learned J.J. Board only taking into consideration the gravity of offence without taking into consideration the Social Investigation Report while there is nothing adverse against both the petitioner in Social Investigation Report. The impugned order passed by the learned J.J. Board, which was affirmed by the learned Appellate Court are based on surmises and conjectures. It is also submitted that the similarly situated co-accused, namely, Amit Oraon has been granted bail by this Bench in Cr. Revision No.779 of 2023 vide order dated 08.11.2023

4. The learned APP appearing on behalf of the State opposed the contentions made by the learned counsel for the petitioners and contended that though the name of the petitioners do not figure in the FIR; yet during investigation the victim also identified the petitioners being involved in commission of gang rape. The order passed by the learned J.J. Board, which was affirmed by the learned Appellate Court bear no infirmity.

5. The prosecution case is that the informant-victim gave written statement with the police station concerned that on 14.01.2022 she had gone in a marriage ceremony to Chergi, P.S. Bharno, District Gumla and from there on 16.01.2022, she came to the house of her elder mother at Village Bhauro and stayed in the night. On 17.01.2022 in the morning she left Bhauro and reached to Bhandra. At 08:00 o'clock in the evening along with her friend Gudda Mahto and Sanjay Oraon, where her friend Gudda Mahto and Sanjay Oraon, both took her near Chirgu School and in the bush both raped her. After some time, five to six persons also attracted there and all had raped her. She had also pelted a stone, which hit one of the accused Raju Oraon. On raising alarm, all the accused persons fled away. From this written information, Case Crime No.05 of 2022 was registered under Section 376DA/34 of the Indian Penal Code and under Section 4/6 of the POCSO Act against the accused Gudda Mahto, Sanjay Oraon, Raju Oraon and five to six unknown persons.

6. The restatement of victim was also recorded during investigation, in which, she reiterated the allegations made in the FIR. The statement of Manisha was also recorded, in which, she stated that the accused Gudda Mahto or the friend of victim along with his friend Sanjay Oraon, Ravi Oraon, Mahavir Lohra came by the motorcycle at 06:30 and took the victim with them. Later on, the victim told her in regard to the occurrence. Same kind of statement was given by the witness Balmani Oraon and Laliteshwar Oraon.

7. In paragraph No.127 of the case diary, the victim identified both the petitioners along with other co-accused persons.

8. The victim was medically examined in view of para 151 of the case diary, but the same is not legible on record.

9. From the very perusal of the FIR and the statement of victim recorded under Section 164 of the Code of Criminal Procedure, it is found that along with named accused, other five boys were also raped her and during investigation she

identified them. This prosecution story is not corroborated with the statement of victim under Section 164 of the Code of Criminal Procedure to the extent of identification of those accused, who were not named in the FIR.

10. So far as the Social Investigation Report of the petitioner No.1/ juvenile is concerned, his attitude towards his family members, neighbours, friends and schoolmate, while school days are found to be cordial. There is no criminal antecedent and nothing adverse is shown against petitioner No.1/CCL.

11. So far as the Social Investigation Report of petitioner No.2/juvenile is concerned, his attitude towards the family members, classmate, teachers, friends while during school days, is shown to be cordial. No criminal antecedent is against the petitioner No.2/CCL.

12. It is settled law that the bail application of a juvenile should ordinarily be allowed, except the circumstances as laid down under the proviso of Section 12 of the J.J. Act, 2015. In view of the Social Investigation Report, none of the ground is shown against the CCL as

enumerated under the proviso of Section 12 of the J.J. Act, 2015.

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

"12. (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 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 subsection (1) by the officer-in-charge of the police station, such officer shall cause the person to be kept only in an observation home in such manner as may be prescribed until the person can be brought before a 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.”

14. So far as the Social Investigation Report of the petitioner Nos.1 and 2/ CCL is concerned, from perusal of the same, it is found that there is nothing adverse against them.

15. In view of the submissions made and the materials on record, nothing is on record to show that the release of the petitioner on bail would expose him to physical, psychological or moral danger or defeat the ends of justice. Nothing is on record that the CCLs would come in association of known criminals. The bail application of the petitioner Nos.1 and 2 was rejected on the sole ground taking into consideration the gravity of offence. As such, the impugned order passed by the learned Court below needs interference and this Criminal Revision deserves to be allowed.

16. Accordingly, the instant Criminal 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.

17. In consequence thereof, the petitioner Nos.1 and 2/ CCLs are directed to be released on bail on furnishing bail bond of Rs.25,000/-(Rupees Twenty-Five Thousand) each with two sureties of the like amount on behalf of their guardian (uncle of petitioner No.1 and father of petitioner No.2) to the satisfaction of the learned court concerned. The guardian of the CCL (uncle of petitioner No.1 and father of petitioner No.2) would also give undertaking that he would keep his vigil eyes upon them and will restrain them from coming in association of the known criminals.