

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.1395 of 2020**

**In
CRIMINAL MISCELLANEOUS No.19653 of 2020**

Arising Out of PS. Case No.-188 Year-2018 Thana- RAXAUL District- East Champaran

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BILLU KUMAR @ RAJ KUMAR GUPTA @ BILLU Son of Vinay Prasad
@ Vinay Sah Resident of Village - Srirampur, Ward No. 15, P.S. Raxaul,
District - East Champaran.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Radha Mohan Singh

For the Respondent/s : Mr. Binor Bihari Singh, APP

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**CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER**

4 17-08-2020 The court proceeding has been conducted through
virtual mode.

Since the Court proceeding in physical mode is not
functional due to the present pandemic, Covid-19, the matter
has been listed with defects.

Learned counsel for the appellant undertakes to
remove the defects within a period of three weeks on
resumption of physical court proceeding.

In case of non-removal of the defects within the



undertaken period, the office will place the matter before the Bench.

Heard learned counsel for the appellant and the State.

The present application was initially filed under Section 439 and 440 of the IPC with a prayer for bail challenging the order of learned 1st Additional Sessions Judge-cum-Special Judge, Children's Court, East Champaran, Motihari in connection with Trial No. 07 of 2020, arising out of Raxaul P.S. Case No. 188 of 2018, registered for the offences punishable under Sections 365/34 of the IPC since the petitioner was declared juvenile in conflict with law vide order dated 03.12.2019, passed by learned Principal Magistrate, Juvenile Justice Board, East Champaran, Motihari in J.J.B. Case No. 1436 of 2019, arising out of Raxaul P.S. Case No. 188 of 2018. The appellant's age was assessed as 17 years 2 months and 2 days. However, subsequently, learned Principal Magistrate, Juvenile Justice Board, East Champaran, Motihari, after having conducted preliminary assessment under Section 15 of the Juvenile Justice (Care & Protection of Children) Act, 2015 (hereinafter referred to as 'the Act') passed the order dated 07.01.2020, for trial of the appellant as an adult and transferred the trial of the appellant to the Children Court in terms of



Section 183 of the Act. Subsequently, the prayer for bail of the petitioner was rejected by learned Children Court, vide order dated 24.02.2020. Since the petitioner was declared juvenile and the learned Special Judge, in exercise of jurisdiction under Section 12 of the Act rejected the prayer for bail of the appellant, learned counsel for the petitioner was permitted to convert the bail application filed under Sections 439 and 440 of the Cr. P.C. into an appeal under Section 101 of the Act.

The prosecution case, as per the written report of Banshi Devi, submitted to the Station House Officer, Raxaul Police Station is to the effect that the son of the informant, Vinay Kumar was traceless since 22.07.2018. Subsequently, during search, suspicion was raised that co-accused Vishal Kumar, Parduman Kumar, Manish Kumar, Tinku Kumar and the appellant Billu Kumar have kidnapped the son of the informant.

Learned counsel for the appellant submits that only on the basis of suspicion, the appellant has been roped in as an accused in the present case. A statement has been made in paragraph no.3 of the petition that the appellant is not having any criminal antecedent. It is further submitted that prayer of bail under Section 12 of the Act can only be refused if there is reasonable ground for the Court to believe that the release is



likely to bring the juvenile into association with any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice. Though, the impugned order reflects that from the social investigation report, it appears that the appellant is in the bad company and hence, the prayer for bail has been rejected.

Learned APP for the State submits that the petitioner is named in the FIR and after considering the social investigation report, learned Special Judge rejected the prayer for bail of the appellant.

Having heard learned counsel for the parties, it is well settled law that under the Juvenile Justice (Care & Protection of Children) Act, 2015, case of a juvenile is transferred to the Children Court for trial as an adult if the offence is heinous in nature and prayer for bail of such juvenile is considered under Section 12 of the Act. Section 12 of the Act specifically mandates that grant of bail to a juvenile is a rule but it can be rejected when it appears reasonable to the Court believing that release is likely to bring him into association with any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice.



Hence, distinction between consideration of bail under Sections 439 and 440 of the Cr. P.C. and consideration of bail under Section 12 of the Act is that the bail application filed under Sections 439 and 440 of the Cr. P.C., the nature of accusation is a guiding factor for grant of bail, whereas in an application preferred under Section 12 of the Act, the nature of accusation is not the guiding factor for consideration of bail. It can only be rejected if the Court has reason to believe that release is likely to bring him into the association with any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice.

In the circumstances, the order dated 24.02.2020, passed by learned 1st Additional Sessions Judge-cum-Special judge, Children's Court, East Champaran, Motihari in Trial No. 07 of 2020 arising out of Raxaul P .S. Case No. 188 of 2018 is hereby set aside and the appellant named is directed to be released on bail for the present provisionally for a period of three months on furnishing one surety i.e., his father or mother to the satisfaction of the learned 1st Additional Sessions Judge-cum-Special judge, Children's Court, East Champaran, Motihari, in connection with Trial No. 07 of 2020 arising out of



Raxaul P .S. Case No. 188 of 2018.

However, in view of the present pandemic COVID- 19, it will be open for the learned Court below to accept the bail bond on furnishing an undertaking by the surety, on photo copy of his Aadhar Card to the effect that he is ready to become the bailor of the petitioner which may be transmitted by such surety on photo copy of his Aadhar Card to the effect that he is ready to become the bailor of the petitioner which may be transmitted by such surety to the learned Court concerned through e-mode.

The provisional bail of the petitioner will be confirmed by the learned Court below within three months on furnishing bail bond of Rs.10000/- (ten thousand) with two sureties including one surety given at the time of provisional bail of the like amount each to the satisfaction of learned 1st Additional Sessions Judge-cum-Special judge, Children's Court, East Champaran, Motihari, in connection with Trial No. 07 of 2020 arising out of Raxaul P .S. Case No. 188 of 2018.

The learned Court below will be at liberty to extend the period of provisional bail further if the court proceeding in physical mode will not resume in next three months.

The learned court below will be at liberty to cancel



the bail bonds of the petitioner if he defaults for three consecutive occasions during trial.

Accordingly, the present appeal is allowed and disposed of.

(Dinesh Kumar Singh, J)

Amrendra/-

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