

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.2053 of 2021**

Arising Out of PS. Case No.-153 Year-2020 Thana- PANAPUR District- Saran

SUNIL KUMAR @ BHUWAR SON OF HARENDRA MAHTO R/O
VILLAGE- LAGUNI, P.S.- PANAPUR, DIST.- SARAN AT CHAPRA,
UNDER GUARDIANSHIP OF LAALO DAVI, THE MOTHER OF THE
APPELLANT

... .. Appellant

Versus

THE STATE OF BIHAR

... .. Respondent

Appearance :

For the Appellant/s : Mr. Satya Prakash, Advocate
For the Respondent/s : Mr. Shyam Kumar Singh, APP.

**CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL ORDER**

2 12-08-2021 Let the defects be removed within four weeks of start
of the physical Court.

Heard the parties in virtual Court proceeding.

This is an appeal under Section 101 (5) of the Juvenile Justice (Care and Protection of Children) Act, 2015 against the refusal of prayer for bail by order dated 15.02.2021 passed by learned 1st Additional Sessions Judge cum Special Judge, Children Court, Saran at Chapra in Children Court Case No. 03 of 2021 arising out of Panapur P.S. Case No. 153 of 2020 registered under Sections 341, 323, 376, 506 of the I.P.C., and Section 4 of the POCSO Act.

According to first information report, the appellant induced the informant and was in physical relation with the



informant since last one year. On 10.10.2020, the appellant taking advantage of the darkness, on the way, lifted the informant which was protested by the grandmother of the informant and the matter was reported to the police. Evidently, the victim as well as the appellant both claim to be a minor.

There is no dispute that the appellant was declared juvenile by the Juvenile Justice Board on the basis of school documents. While refusing prayer for bail, the Children Court observed as follows:-

“From perusal of the record it appears that the petitioner (child in conflict with law) is accused of offence of rape which is a heinous offence and the alleged victim is his neighbour. Section 12 of the Act enables the court to grant bail to juvenile but he shall not be so released if there appears reasonable grounds for believing that the 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. As stated earlier, the child in conflict with law is accused of offence of rape and the alleged victim is his neighbour. Since both the parties are neighbours, the release of the child in conflict with law would expose him to the danger of retribution. Further the child in conflict with law is accused of the heinous offence of rape and his release would



defeat the ends of justice also. Further from perusal of para 21 of the SBR and para 5 of the result of inquiry by probation officer in SIR, it appears that if the child in conflict with law is released on bail, he will fall in bad association. So the release of the child in conflict with law will expose him to moral, physical and psychological danger and it will defeat the ends of justice also.”

The law is well settled that a juvenile in conflict with law cannot be refused bail irrespective of the nature and seriousness of the allegation. Only exception is proviso to Section 12 of JJBA which has been taken into consideration by the learned Children Court as noted above. However, the court below failed to consider that there was no material to substantiate that in the event of release, the appellant would go in association with any **known criminal**. Moreover, there is nothing on the record to substantiate that in the event of release, the appellant would be exposed to moral, physical or psychological danger. The court below has not discussed the reason for holding that in the event of release, the ends of justice would be defeated especially in absence of any criminal background.

Hence, in my view, the impugned order is not sustainable in law. Accordingly, the same is, hereby, set aside.



Let the appellant be released on giving an undertaking by either of the parents that the appellant would be kept in his/her proper care and upkeep and shall be fully cooperative with the enquiry/trial pending against the appellant.

Accordingly, this criminal appeal stands disposed of.

(Birendra Kumar, J)

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