

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.391 of 2021

Arising Out of PS. Case No.-120 Year-2020 Thana- SIDHWALIYA District- Gopalganj

SHAH ALAM SON OF MO.IDRIS ANSARI @ IDRIS MIYAN @ IDRIS ALAM Resident of Village - Khajuriya, P.S.- Sidhwaliya, Distt.- Gopalganj Under Guardianship of his Father - Mo. Idris Ansari @ Idris Miyan @ Idris Alam, S/o Subedar Miya, R/o- Khajuriya, P.s.- Sidhwaliya, Distt.- Gopalganj.

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Ajay Kumar Pandey

For the Respondent/s : Mr.Ram Bilash Roy Raman

CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
ORAL ORDER

3 24-09-2021 Heard learned counsel for the petitioner and learned APP
for the State through virtual court proceeding.

Learned counsel for the petitioner undertakes to remove the defects within four weeks of resumption of normal court proceeding. In the eventuality of non-removal of defects within undertaken period, office will place the matter before the Bench.

This is an application u/s 102 of the Juvenile Justice (Care and Protection of Children) Act, 2015, challenging the order of lower appellate court dated 02.03.2021 passed by learned 1st Additional Sessions Judge, Gopalganj in Cr. Appeal No.03/2021 as well as order dated 22.01.2021 passed by the Juvenile Justice Board, Gopalganj in J.E. No.67/2020 arising out of Sidhwaliya P.S. Case No.120/2020 registered under sections 341/ 342/ 307/



364/ 34 of the Indian Penal Code.

The petitioner was declared juvenile by the Juvenile Justice Board and the order got finality.

The prosecution case, in short is that while the informant had gone for running on 14.06.2020, the petitioner and other accused persons came there and asked to go behind the college and when he went behind, co-accused Aslam caught his neck and stuffed handkerchief in his mouth and all of them dashed in bush and his legs and hands were tied, thereafter he was packed in a yellow plastic bag. His ear was tied by a gamcha, thereafter they thought that the informant has died then co-accused assaulted on his head by bricks and was loaded on motorcycle and the petitioner sit behind the motorcycle and when the informant reached near Shiv Mandir Khajuria, started shouting. Thereafter the accused persons fled away leaving him behind and then he was brought to hospital for treatment.

Learned counsel for the petitioner submits that the petitioner is quite innocent and has committed no offence whatsoever but he has been falsely implicated in this case due to ulterior motive. The petitioner and informant are co-villagers and due to earlier enmity, he has been falsely implicated in this case. There is general and omnibus allegation leveled against



the petitioner and nothing specific has been attributed against the petitioner. The prosecution witnesses do not support the prosecution case as alleged in the FIR. It is further submitted that there is no direct evidence against the petitioner and both the Courts below ignored the mandate of Juvenile Justice Act which requires that bail to a Juvenile is a right and the refusal is an exception. The seriousness of the offence is no consideration for refusal of bail as required u/s 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015. Moreover, without any material on record to substantiate that in the event of release, petitioner would go into association with unsocial elements and would be exposed to moral, physical and psychological danger, the learned Courts below have refused the prayer on this ground. The petitioner has no criminal antecedent and is languishing in custody since 17.07.2020.

The father of the petitioner undertakes that he will keep his son in his strict guardianship and keep proper watch on him.

Further, in compliance of order dated 26.08.2021, social investigation report has been sent, which indicates that the petitioner has no bad behavior or criminal antecedent prior to the present occurrence and he is not a threat to the society.

Considering the facts and circumstances of the case, since



both the Courts below have committed error of record in coming to the conclusion that in the event of release, petitioner would go into association with some known criminals or would be exposed to moral, psychological and otherwise danger without any material to substantiate the same, hence both the orders are fit to be set aside.

Considering the totality of the facts and circumstances as discussed above, this application is allowed and the aforesaid orders dated 02.03.2021 and 22.01.2021 are set aside.

Let the petitioner, above named, be released at once on execution of bond by either of the parents of the petitioner giving undertaking that he/she shall keep proper care and upkeep of the petitioner and shall fully cooperate with the investigation/trial against the petitioner.

(Anjani Kumar Sharan, J)

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