

**IN THE HIGH COURT OF JUDICATURE AT PATNA
(FROM RESIDENTIAL OFFICE VIA VIDEO APPLICATION)
CRIMINAL REVISION No.394 of 2021**

Arising Out of PS. Case No.-320 Year-2020 Thana- KHAIRA District- Saran

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ADITYA KUMAR SON OF BINOD PRASAD @ BINOD SAH Resident of Village- Kadipur Nabiganj, Nagra, Police Station- Khaira, District- Saran under Guardianship and Natural / Legal guardian of his Maternal Uncle namely Devendra Kumar, aged about 36 years, Gender- Male, Son of Late Paras Nath Prasad, Resident of Village and P.O.- Satua, Police Station- Baniyapur, District- Saran.

... .. Petitioner

Versus

The State of Bihar

... .. Respondent

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Appearance :

For the Petitioner/s	:	Mr. Ashok Kumar, Advocate
For the Respondent/s	:	Mr. Shailendra Kumar Singh, APP
For the Informant	:	Mr. Brij Bihari Tiwary, Advocate

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**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER**

3 23-08-2021 Heard learned counsel for the petitioner, learned counsel for the informant and learned A.P.P. for the State.

Petitioner in the present case is a juvenile. He is seeking to set aside the impugned order dated 05.04.2021 passed by learned 1st Additional Sessions Judge-cum-Children Court, Saran at Chhapra in Cr. (Juvenile) Appeal No. 05 of 2021/Reg. No. 05 of 2021 in connection with J.J.B. Case No. 890 of 2021 arising out of Khaira (Nagra) P.S. Case No. 320 of 2020 registered for the offences punishable under Sections 147, 148, 149, 323, 324, 307, 302, 354(B), 452 and 380 of the Indian Penal Code whereby and whereunder the learned court has rejected the

prayer for regular bail of the petitioner.

As per the prosecution story there had been a quarrel between the family of the petitioner and the family of the informant in which this petitioner is said to have assaulted his younger brother by means of a farsa causing injury on his abdomen which ultimately resulted in death of the victim. The petitioner's side has also lodged an F.I.R. in which allegations have been made that the present prosecution side had assaulted the petitioner's side. This petitioner was also assaulted. Annexure '2' is the F.I.R. of the counter case.

Learned counsel for the petitioner submits that the petitioner has been declared juvenile aged about fifteen years nine months on the alleged date of occurrence. He has relied upon his matriculation certificate giving the date of birth. The order dated 12.01.2021 showing his age determination is on the record.

Learned counsel for the petitioner submits that the petitioner is a student of intermediate class. The alleged occurrence is said to have taken place on a dispute over right to way and both the parties had allegedly assaulted each other. The neighbours and the co-villagers of the petitioner have not made any complaint against the behavioural pattern of this petitioner.

Further learned counsel has relied upon the Hon'ble

Division Bench judgment of this Court in the case of **Lalu Kumar and Others vs. State of Bihar and Others** reported in **2019 4 PLJR 833**. Paragraph '84' to '86' of the said judgment have been relied upon to submit that the seriousness of the allegation and classification of the offences whether bailable or non-bailable would not be a reason to reject the prayer for bail of the petitioner. It is submitted that relying upon the Hon'ble Division Bench judgment of this Court, a learned co-ordinate Bench of this Court has considered this aspect of the matter in Criminal Revision No. 50 of 2020 disposed of on 25.09.2020. In the said case also the petitioner was a juvenile and the offence was under Sections 363, 365 and 302/34 I.P.C. The learned co-ordinate Bench took a view that the prayer for bail of the said petitioner cannot be refused on the grounds stated in the impugned order.

It is, thus, his submission that considering the age of the juvenile being less than sixteen years, if Section 15 and 18(3) of the Act of 2015 do not apply in his case, the petitioner deserves privilege of bail keeping in view the social investigation report and that his maternal uncle is giving an undertaking that if released on bail, the petitioner would be taken to the village of the maternal uncle where he will be guided by him and care will be taken to continue his study and not to fall in any bad company.

Learned counsel for the informant has opposed the prayer for bail of the petitioner on the ground that this petitioner is the assailant of the deceased. Initially though learned counsel referred Section 15 and Section 18(3) of the Act of 2015 but in course of his argument, learned counsel agreed that Section 15 and 18(3) would not be applicable in the case of this petitioner because the petitioner has not completed sixteen years of age.

Learned A.P.P. for the State has also opposed the prayer for bail of the petitioner.

In this case social investigation report has been received. The Probation Officer has reported that the family members of the petitioner has got good relationship among themselves and the neighbours of the petitioner have stated that the petitioner has got good behaviour, he is interested in studies and is a disciplined boy. The neighbours have stated that in the quarrel over right to way both the parties had indulged in the quarrel in which the present occurrence took place. This boy is a student of intermediate class, his studies are getting affected and he had himself surrendered.

The Probation Officer has further observed that after the alleged occurrence, mother of the petitioner and other siblings are living in the house of the maternal uncle where they are being looked after properly. The Probation Officer has

recommended that there is no problem in rehabilitation of this petitioner. He has also stated that because the petitioner is in the observation home, he is disconnected from his studies.

Considering the facts and circumstances of the case, though the allegations in the F.I.R. are serious in nature as this petitioner is said to have given the assault, the circumstances show that both the parties have indulged in the quarrel and have assaulted each other, there is a case and counter case, the Hon'ble Division Bench of this Court in the case of **Lalu Kumar** (Supra) has taken a view that seriousness of the allegation alone cannot be a ground to reject the prayer for bail of a juvenile, what is to be seen is what is in the best interest of the child. The petitioner has not completed sixteen years on the date of occurrence hence Sections 15 and 18(3) of the Act of 2015 are not attracted. In the present case, the prayer for bail of the petitioner has been rejected by the learned Juvenile Justice Board as well as the Appellate Court saying that both the parties belong to the same village and are neighbours so if the petitioner is released on bail there would be danger of retribution by the other party and the petitioner would be exposed to physical danger.

Paragraph '84', '85' and '86' of the judgment of **Lalu Kumar** (Supra) are quoted hereunder for a ready reference:-

"84. While interpreting Section 12, the Board is

duty bound to be guided by the fundamental principles enumerated in Section 3 of the Act of 2015, specially the principles of 'best interest', 'repatriation' and 'restoration' of child. The fundamental principles in Section 3(xii) provides that a child shall be placed in institutional care as a step of last resort after making a reasonable inquiry. The gravity and nature of the offence are immaterial for consideration of bail under the Act of 2015. As per Section 12 of the Act of 2015, an application for bail is not decided by reference to classification of offences, as bailable or non-bailable under the Cr.P.C. All persons alleged to be in conflict with law and apparently a child when apprehended must be released except in the following three circumstances when there is reasonable ground for believing that :-

- (i) The release is likely to bring that person into association with any known criminal;
- (ii) The release is likely to expose the said person to moral or psychological danger; and
- (iii) The release would defeat the ends of justice.

85. In all cases, the Board is required to record its reason, if it refuses to release the child on bail and the circumstances that laid to such a decision. Taking surety is not essential for ordering release of the child on bail. The child may be released without surety also. The child may be placed under the supervision of a 'probation officer' or under the care of any 'fit person' after release on bail. It further provides that in case the court has directed release of the child on bail after fulfilling certain conditions, but the child is unable to fulfill those conditions in

the next seven days, the Board shall modify those conditions.

86. The Board is vested with the power to grant bail to any person, who has not completed the age of 18 years irrespective of the nature of offence being 'bailable' or 'non-bailable' or specified in any of three categories of the Act, as 'petty offences', 'serious offences' and 'heinous offences'."

In the light of '**Lalu Kumar**' a learned co-ordinate Bench in Cr. Rev. No. 50 of 2020 granted bail to the petitioner. The relevant observations of the learned co-ordinate Bench may be found in paragraph '16' which reads as under:-

"16. The Division Bench further considered whether the seriousness of the offence alleged is a ground for rejection of the bail of a child in conflict with law. It held that seriousness of the offence alleged cannot be made a ground for rejection of prayer for bail in the case of child in conflict with law for simple reason that the principle of bail under the Act of 2015 is not the same as enumerated under Chapter XXXIII of the Cr.P.C. Bail and not institutionalization continues to be the principle under the Act."

This Court is of the opinion that given the kind of social investigation report with regard to this petitioner, if his maternal uncle is ready to furnish an undertaking that after release on bail the petitioner would be kept in the village of his maternal uncle and the whole family of the petitioner is presently residing in the house of the maternal uncle, the petitioner would not only be in a position to continue with his studies, he would be

also reunited with his family and it will not expose him to any physical danger, considering all these aspects, this Court sets aside the impugned order and directs release of the petitioner on bail on furnishing bail bond of Rs. 25,000/- (Rupees Twenty Five Thousand only) with two sureties of the like amount each to the satisfaction of learned 1st Additional Sessions Judge-cum-Children Court, Saran at Chhapra in connection with J.J.B. Case No. 890 of 2021 arising out of Khaira (Nagra) P.S. Case No. 320 of 2020.

One of the bailors would be the maternal uncle of the petitioner and he will also furnish an undertaking that after his release on bail, the petitioner shall be kept in the house of the maternal uncle and he will take care of his study and further petitioner would not be exposed to any bad elements.

The Probation Officer shall keep on visiting the place of the petitioner and will periodically submit his report to the Juvenile Justice Board, Saran at Chhapra as regards the conduct of the petitioner.

The application is, thus, allowed.

(Rajeev Ranjan Prasad, J)

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Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.