

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.454 of 2021

Arising Out of PS. Case No.-783 Year-2020 Thana- BARACHATTI District- Gaya

VIMAL KUMAR S/O BANWARI YADAV @ BANWARI PRASAD Under the guardianship of his father namely Banwari Prasad @ Banwari Yadav, aged about 44 years, Male, S/o Pannu Prasad, R/o village- Manichak, P.S.- Barachatti, District- Gaya

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Kundan Kumar Mr.Yogesh Kumar
For the Respondent/s	:	Mr.Ganesh Prasad Singh

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) Act, challenging the order of lower appellate court dated 15.06.2021 passed by the learned Special Judge (Children Court), Gaya in Cr. Appeal (Juvenile) No.29/2021 as well as order dated 19.03.2021 passed by the Principal Magistrate, Juvenile Justice Board, Gaya in connection with



G.R. No.3/2021 arising out of Barachatti P.S. Case No.783/2020 registered under sections 364/302/201/34 of the IPC.

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

Allegation against the petitioner is that he along with one Uday Kumar (tenant of the informant) has killed the son of informant.

Learned counsel for the petitioner submits that the petitioner is quite innocent and has committed no offence as alleged against him. The name of petitioner transpired in the case on the confessional statement of co-accused Uday Kumar. From perusal of the FIR, it transpires that alleged date of occurrence is 28.12.2020 but FIR has been instituted on 31.12.2020 after delay of 3 days without explaining the reason for delay. There is no specific overt act against the petitioner. There is no material available on the entire case record to substantiate the allegation against the petitioner. He has been falsely implicated in this case on doubt and suspicion. Petitioner has no criminal antecedent and is in observation home since 02.01.2021.

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.

Vide order dated 26.08.2021, case diary as well as social investigation report of the Probation Officer was called for.

The same has been received. Perused the social investigation report, which indicates that the petitioner has no bad behavior issue or connected with the bad element in the society prior to the present occurrence.

Under the aforesaid facts and circumstances, 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 23.01.2021 and 07.11.2020 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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