

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.3074 of 2021

Arising Out of PS. Case No.-5 Year-2021 Thana- JIRADEI District- Siwan

Ujjawal Kumar Pandit S/o Kamlesh Pandit R/o village- Thepaha Kumhar
Toli, P.S.- Ziradei, District- Siwan, under the guardianship of his mother
Lalmati Devi, W/o Kamlesh Pandit

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Ajay Kumar Tiwary

For the Respondent/s : Mr.Syed Ashfaque Ahmad

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL ORDER

2 20-09-2021 This matter is taken up for consideration through
Video Conferencing.

Heard learned counsel for the petitioner and the State.

This memo of appeal is directed against the order dated 26.06.2021 passed by learned PO Children Court-cum-Ist Additional Sessions Judge-cum-Special Judge, Siwan in Criminal Appeal No. 18 of 2021 by which he has dismissed the criminal appeal and confirmed the order dated 08.04.2021 passed by learned Juvenile Justice Board, Siwan in J.E. No. 78 of 2021 GR No. 158 of 2021 arising out of Ziradei P.S. Case No. 05 of 2021 and also against the order dated 08.04.2021 passed by the learned Juvenile Justice Board, Siwan in J.E. No. 78 of 2021, GR No. 158 of 2021 who has rejected the prayer for



bail registered for the offence punishable under Sections 302, 201/34 of the Indian Penal Code.

As per the prosecution case, on 07.01.2021 at 15 hours informant's younger son Rohit Kharwar had gone towards Thepaha Kumhar Patti. In the meantime, the elder son of informant Sanjay Kharwar made video call on the mobile of Rohit Kharwar and at that time Rohit Kharwar along with Ujjawal Kumar Pandit (petitioner) and Dhananjay Kumar were at Titara Railway Dhala. Thereafter, informant called her son Rohit Kharwar on his mobile, but he did not receive the phone call. On the next day, in the morning, Informant's husband who was at Hyderabad called on mobile of pattidar Sima Devi and informed that his son Rohit Kharwar was killed and his dead body was thrown at Titara Railway Station and Sima Devi gave this information to the informant, thereafter, she rushed there and saw that the neck of his son was cut and was lying near a bridge. Informant suspects that petitioner and other co-accused have killed her son.

It is submitted on behalf of the petitioner that informant is not eye-witness of the occurrence. Only on suspicion petitioner has been made accused in this case. There is no direct or indirect material against the petitioner which shows



his complicity in the aforesaid crime. Moreover, on the date of the commission of alleged occurrence the petitioner has been found to be aged as 17 years 06 months and 19 days according to his date of birth mentioned as 25.06.2003 in the matriculation certificate. On the basis of said matriculation certificate, petitioner has been declared juvenile by the learned Juvenile Justice Board, Siwan vide order dated 09.03.2021. Thus, the petitioner is a student and his career will be spoiled if he is detained in custody. It is further submitted that Juvenile Justice Board as well as Children Court have rejected the bail application of the petitioner only considering the merit and nature of allegation which is not in consonance with the mandate of law. Case of juvenile is to be considered on the criteria laid down under Section 12 of of the Juvenile Justice (Care and protection of Children) Act, 2015. It is further submitted that social investigation report is based on conjectures and surmises and without any tangible material. There is no evidence to find that the appellant will fall in the company of some known criminals or his release will expose him to moral, physical and psychological danger or his release will defeat the ends of justice, as envisaged in Section 12 of Juvenile Justice Act, 2015. Moreover, mother and family member of the



appellant is ready to take care of the appellant. Petitioner has got clean antecedent and he is in custody since 11.01.2021.

Counsel for the State vehemently opposed the prayer for bail.

From perusal of provisions of sections 12 of the Juvenile Justice (Care and Protection of Children) Act, it is evident that the Juvenile Justice Board as well as the Appellate Court are required to look into aspects which may be relevant with reference to three grounds, namely, likelihood of association with criminals, likelihood of moral, physical or psychological danger and likelihood to defeat ends of justice, rather than searching into merits of the case or nature and gravity of allegation. In this case, without there being such finding or report of social investigation, only nature and gravity of offence has been taken into consideration while considering bail application of this appellant which is contrary to statutory mandate of Section 12 of Juvenile Justice Act, Interest of children is paramount consideration in such cases. In absence of adverse report of social investigation on those three accounts, the bail should not be denied to a juvenile in conflict with law.

Considering the rival submission of the parties and the position of law as stated above, this appeal is allowed. The



orders dated 26.06.2021 passed by learned PO Children Court-cum-Ist Additional Sessions Judge-cum-Special Judge, Siwan and dated 08.04.2021 passed by learned Juvenile Justice Board, Siwan are set aside.

Let the appellant above-named, be released on bail on furnishing bail bond of Rs. 10,000/- (Ten thousand) with two sureties of the like amount each to the satisfaction of the learned Juvenile Justice Board, Siwan in connection with JE NO. 78 of 2021, GR No. 158 of 2021 arising out of Ziradei PS Case No. 05 of 2021 with further condition that the mother of the appellant shall file an affidavit for the good behaviour and child's well being for a period of one year.

(Prabhat Kumar Singh, J)

vinita/-

U		T	
---	--	---	--

