

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.3648 of 2021

Arising Out of PS. Case No.-509 Year-2019 Thana- BIDUPUR District- Vaishali

ADITYA KUMAR @ ADITYA DEV S/o Vishnu Dev Roy @ Ranjan Roy @ Vishnudev Kumar R/o village- Gopalpur, P.S.- Bidupur, District- Vaishali, Minor under the Guardianship of his father Vishnu Dev Roy @ Rajan Roy @ Vishnudev Kumar, R/o village- Gopalpur, P.S.- Bidupur, District- Vaishali

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mrs.Sudha Chandra, Adv
For the Respondent/s : Mr.Binod Bihari Singh, APP

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 27-10-2021

Let the defect (s) be removed within two weeks of the complete start of the physical Court.

2. Heard the parties.

3. This is an appeal under Section 101(5) of the Juvenile Justice (Care & Protection of Children) Act, 2015 against refusal of the prayer for bail to the appellant by order dated 02.01.2021 passed by the learned Children Court-cum-A.D.J.-VI, Vaishali at Hajipur in Bidupur P.S. Case No.509 of 2019.

4. The appellant was declared juvenile by the Juvenile Justice Board on the basis of school documents and entry of date of birth in the Adhar Card as well as opinion of the Medical Board.

5. The appellant is accused in the aforesaid case carrying allegation of commission of firearm injury to the



deceased. The impugned order reveals that prayer has been refused by observing, *“seeing the gravity of the matter and his direct involvement in the said heinous offence, this Court does think it fit, just proper and legal to admit the petitioner on bail. Accordingly, the bail petition of the petitioner is being rejected hereby.”*

6. Bail of a juvenile in conflict with law is considered in accordance with the provisions of Section 12 of the Juvenile Justice (Care & Protection of Children) Act, which reads as follows:

“12. Bail to a person who is apparently a child alleged to be in conflict with law.- (1) *When any person, who is apparently a child and is alleged to have committed a bailable or non-bailable offence, is apprehended or detained by the police or appears or brought before a Board, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, be released on bail with or without surety or placed under the supervision of a probation officer or under the care of any fit person:*



Provided that such person shall not be so released if there appears reasonable grounds for believing that the release is likely to bring that person into association with any known criminal or expose the said person to moral, physical or psychological danger or the persons release would defeat the ends of justice, and the Board shall record the reasons for denying the bail and circumstances that led to such a decision.

(2) When such person having been apprehended is not released on bail under sub-section (1) by the officer-in-charge of the police station, such officer shall cause the person to be kept only in an observation home in such manner as may be prescribed until the person can be brought before a Board.

(3) When such person is not released on bail under sub-section (1) by the Board, it shall make an order sending him to an observation home or a place of safety, as the case may be, for such period during the pendency of the inquiry regarding the person, as may be specified in the order.



(4) When a child in conflict with law is unable to fulfil the conditions of bail order within seven days of the bail order, such child shall be produced before the Board for modification of the conditions of bail.”

7. A bare perusal of the provision aforesaid makes it abundantly clear that when a child is alleged to have committed a bailable or non-bailable offence (in the present case, allegation is of commission of non-bailable offence rather of heinous offence as defined under Section 2(33) of the J.J.B. Act) he would be entitled to be released on bail unless the case is covered by the proviso to the said Section.

8. The learned Children Court has not recorded that the case of the appellant is covered under proviso to Section 12 of the said Act. Therefore, only on the ground that heinous offence has been committed by the appellant, prayer for bail should not have been refused against the mandate of the law. Therefore, the impugned order is not sustainable. Accordingly, the same is set aside.

9. Let the appellant, above named, be released on bail on execution of surety bond by either of the parents of the appellant giving undertaking that they shall keep proper care and



upkeep of the appellant and shall fully cooperate in the pending enquiry/trial.

10. With the aforesaid observation, this appeal stands allowed.

(Birendra Kumar, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	29.10.2021
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