

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.207 of 2021

Arising Out of PS. Case No.-117 Year-2019 Thana- SHERGHATI District- Gaya

UPENDRA KUMAR @ KAKA, aged about 16 years, Male, Son of Sri Ram Pravesh Yadav, Resident of Village and P.S.- Dobhi, District- Gaya. Under the Guardianship of the father namely Ram Pravesh Yadav, aged about 52 years, Male, Son of Mohan Yadav, Resident of Village and P.S.- Dobhi, District- Gaya.

... .. Petitioner

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Petitioner : Mr. Satya Veer, Advocate
For the Respondent : Mr. Choubey Jawahar, A.P.P.

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
ORAL ORDER

4 10-02-2022 Due to the third wave of COVID-19 Pandemic, the matter is being taken up by way of Virtual Court proceeding.

The matter has been listed under the heading 'For Orders' under the orders of Hon'ble the Chief Justice.

Heard learned counsel for the petitioner and learned A.P.P. for the State through Virtual mode.

Learned counsel for the petitioner is directed to remove the defects, as pointed out by the office, within a period of eight weeks.

Further, learned counsel for the petitioner is permitted



to make necessary correction in the prayer portion of the present application.

This Criminal Revision Application has been preferred against the order dated 16.10.2020, passed by learned Special Judge (Children Court), Gaya, in Criminal Appeal (Juvenile) No. 53 of 2020, whereby the appeal filed by the petitioner was dismissed against the order dated 11.09.2020, passed by learned Juvenile Justice Board, Gaya, whereby and whereunder the Juvenile Justice Board, Gaya, has rejected the prayer for bail of the petitioner in connection with Sherghati (Dobhi) P.S. Case No. 117 of 2019 registered under Sections 302/34 of the I.P.C. and Sections 3(2)(v) of the SC/ST Act.

The facts of the case, in brief, is that the father of the informant used to sell toddy in the village. On the date of occurrence, two boys, namely, Mukesh Kumar and one unknown went to his father at 8.30 P.M. and demanded toddy. On refusal, Mukesh Kumar abused the victim. When the informant went to the cottage of his father, he found the cottage burnt and his father charred to death.

Learned counsel for the petitioner submits that the petitioner is a juvenile and is in Remand Home since 16.03.2020. The petitioner has got no criminal antecedent. He



has falsely been implicated in the present case. There is no allegation of tampering with the witnesses alleged against the petitioner. Charge sheet has been submitted in the present case. The petitioner is not named in the F.I.R. His name has transpired in the present case, in course of investigation, on the basis of witnesses who claim to have identified the petitioner in CCTV footage. Except for this, there is no other substantive evidence to suggest the implication of the petitioner in the present case. He further submits that the father of the petitioner is ready to furnish an undertaking that while on bail he will not allow the petitioner to associate with criminals or anti-social elements. The petitioner has relied upon the judgment of ***Lalu Kumar and Ors. V. The State of Bihar (reported in 2019 (4) PLJR 833)*** where a Division Bench of this Court while considering the scope of Section 12 of the Juvenile Justice Act, 2015, in paragraph no. 84 of the judgment has observed the following.

“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.”

Learned A.P.P. for the State is present and has opposed the prayer for bail of the petitioner. It has further been pointed out that the release of the petitioner would defeat the ends of justice.

Having regard to the facts and circumstances of the case, Social Investigation Report of the petitioner was called for from the concerned Probation Officer by order dated 27.09.2021. From perusal of the report, it appears that there is no material in the social investigation report of the petitioner which indicates that the release of the petitioner will bring him in association of any known criminal nor there is any finding that the petitioner would be imposed to physical/psychological



danger on his release.

The law requires that reasonable grounds should be there for believing that in the event of grant of bail, the petitioner would go into association of any 'known criminal' or exposed to moral, physical and psychological danger or the release of the person would defeat the ends of justice. There is no reference of any known criminal nor there is any other substantive material for the conclusion as recorded by the court below.

Hence, the impugned order suffers from failure to exercise jurisdiction vested in law, is result of error apparent on the face of the record and non-consideration of provisions of law. Accordingly, this criminal revision application is allowed and the order dated 16.10.2020, passed by learned Special Judge (Children Court), Gaya in Criminal Appeal (Juvenile) No. 53 of 2020, as well as the order dated 11.09.2020 passed by learned Juvenile Justice Board, Gaya, in connection with Sherghati (Dobhi) P.S. Case No. 117 of 2019, are set aside.

Let the petitioner, who has already been declared juvenile by the learned Juvenile Justice Board, be released in favour of his father on execution of surety bond of Rs. 10,000/- (Rupees Ten Thousand Only), to the satisfaction of learned Juvenile



Justice Board, Gaya, in connection with Sherghati (Dobhi) P.S. Case No. 117 of 2019, with the condition that, the father of the petitioner shall furnish an undertaking that while the petitioner is on bail, he will not allow the petitioner to come in company/association with any criminal or anti-social element and that he will take proper care of the petitioner. Further, the petitioner will be produced as and when required by the Juvenile Justice Board and shall co-operate in the trial.

(Sudhir Singh, J)

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