

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.2683 of 2021**

Arising Out of PS. Case No.-338 Year-2020 Thana- RAJAON District- Banka

Ashish Rajak, aged about 25 years (Male), S/O Shrawan Rajak, R/O Village-Naripa, P.S-Rajoun, District-Banka.

... .. Appellant

Versus

The State Of Bihar

... .. Respondent

Appearance :

For the Appellant : Mr. Brij Nandad Prasad, Advocate
For the Respondent : Mr. Binod Bihari Singh, A.P.P.

**CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
ORAL ORDER**

3 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 appellant and learned A.P.P. for the State through Virtual mode.

Learned counsel for the appellant is directed to remove the defects, as pointed out by the office, within a period of four weeks after restoration of normalcy.

This criminal appeal has been preferred against the order dated 02.02.2021, whereby and whereunder the learned Additional Sessions Judge-I-cum-Children Court, Banka, has rejected the prayer for bail of the appellant in connection with G.R.No. 2751/2020 (corresponding to Rajoun P.S. Case No.



338/2020) registered for the offence under Sections 302/34 of the I.P.C.

The facts of the case, in brief, is that there was some scuffle took place between the parties for watering their field and for this, the appellant alongwith some other accused persons brutally assaulted the mother of the informant with Lathi and Danda over her head, as a result of which, she died on the spot.

It has been submitted on behalf of the appellant that the appellant is in custody since 20.09.2020. The appellant has got no criminal antecedent. There is no allegation of tampering with the witnesses alleged against the appellant. The appellant has falsely been implicated in the present case. Charge sheet has been submitted in the present case. General and omnibus allegation has been made against him. No specific overt act is alleged against the appellant. Learned counsel for the appellant submits that the father of the appellant is ready to furnish an undertaking that while on bail, he will not allow the appellant to associate with criminals or anti-social elements. The appellant 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 appellant. It has further been submitted that the release of the appellant would defeat the ends of justice.

Having regard to the facts and circumstances of the



case, Social Investigation Report of the appellant was called for from the concerned Probation Officer by order dated 26.11.2021. From perusal of the report, it appears that there is no material to substantiate that release of the appellant will bring him in association of any criminal or any anti-social element.

The law requires that reasonable grounds should be there for believing that in the event of grant of bail, the appellant 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 appeal is allowed and the order dated 02.02.2021, passed by learned Additional Sessions Judge-I-cum-Children Court, Banka in G.R. No. 2751/2020 (corresponding to Rajoun P.S. Case No. 338/2020) is set aside.

Let the appellant, 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 Additional Sessions Judge-I-cum-Children Court, Banka, in connection with G.R. No. 2751/2020 (corresponding to Rajoun P.S. Case No. 338/2020), with the condition that, the father of the appellant shall furnish an undertaking that while the appellant is on bail, he will not allow the appellant to come in company/association with any criminal or anti-social element and that he will take proper care of the appellant. Further, the appellant will be produced as and when required by the learned court below and shall co-operate in the trial.

(Sudhir Singh, J)

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