

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.338 of 2020

Arising Out of PS. Case No.-82 Year-2019 Thana- GAUTAMBUDHNAGAR District- Siwan

1. RAM BABU KUMAR @ RAM BABU MAHTO Son of Rajesh Mahto Resident of Village - Saraiya, P.S.- G.B. Nagar, District- Siwan. Through Their Phua Urmila Devi, Female 58 years, W/O- Shankar Mahto, Resident of Village - Sona Pipar, P.S.- Gamharia, District- Siwan
2. Chandrama Kumar @ Chandrama Mahto Son of Rajesh Mahto Resident of Village - Saraiya, P.S.- G.B. Nagar, District- Siwan. Through Their Phua Urmila Devi, Female 58 years, W/O- Shankar Mahto, Resident of Village - Sona Pipar, P.S.- Gamharia, District- Siwan

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Sanjay Parasmani, Advocate
For the Respondent/s	:	Mr.Rajendra Prasad Nat, APP

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
ORAL ORDER

3 16-02-2022 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 petitioners and learned APP for the State through virtual mode.

This criminal revision application has been preferred against the judgment dated 19.02.2020 passed in Cr. Appeal No. 84/2019 by learned Additional District & Sessions Judge-cum- Special Judge, Siwan whereby and whereunder the learned Special Judge has affirmed the order dated 19.11.2019 passed



by learned Juvenile Justice Board, Siwan in G.B. Nagar P.S. Case No. 82 of 2019 registered for the offences under sections 147, 148, 149, 341, 323, 324, 325, 307 of the Indian Penal Code in which section 302 IPC was added later on, and rejected the prayer for bail of the petitioners.

The prosecution story, in brief is that while the informant was on his way to bathan, accused persons,, variously armed, assaulted him and family members. Later, father of the informant succumbed to the injury.

It has been submitted on behalf of the petitioners that the petitioners are in custody since 18.07.2019 and have got no criminal antecedent Charge-sheet has been submitted in the present case. There is no allegation of tampering alleged against the petitioners. As far as petitioner no. 1 is concerned, he is alleged to have assaulted the informant and so far as petitioner no. 2 is concerned, General and omnibus allegation has been made against him. Specific allegation of assault upon the deceased is alleged against co-accused Rajesh Mahto and the post-mortem report corroborates with the allegation made in respect of co-accused Rajesh Mahto There is a land dispute between the parties. Both the parties are agnates. Learned counsel for the petitioners further submits that the father of the



petitioners are ready to furnish an undertaking that while on bail, they will not allow the petitioners to associate with criminals or anti-social elements. The petitioners have relied upon the judgment of ***Lalu Kumar and Ors. Vs. 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 petitioners.



Having regard to the facts and circumstances of the case, Social Investigation Report of the petitioners was called for from the concerned Probation Officer. The Probation Officer in his report has reported that petitioner pursues his study and has got involved in this case due to family dispute amongst the parties. He has not been involved in any criminal activity. Further the report does not reveal that there is any material to substantiate that in the event of grant of bail, the petitioners are likely to go into association of known criminals or any anti-social elements.

The law requires that reasonable grounds should be there for believing that in the event of grant of bail, the petitioners would go into association of any 'known criminal' or exposed to moral, physical and psychological danger or the release of the person would defect 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.

Considering the facts and circumstances of the case as well as the findings of the Probation Officer in the Social Investigation Report of the petitioners and the proposition of law as stated above, this criminal revision application is allowed



and the judgment dated 19.02.2020 passed in Cr. Appeal No. 84/2019 by learned Additional District & Sessions Judge-cum-Special Judge, Siwan and the order dated order dated 19.11.2019 passed by learned Juvenile Justice Board, Siwan in G.B. Nagar P.S. Case No. 82 of 2019, are set aside.

Let the petitioners, who have already been declared juvenile by the learned Juvenile Justice Board, be released in favour of father on execution of surety bond of Rs. 10,000/- (ten thousand) each to the satisfaction of learned Juvenile Justice Board, Siwan arising out of G.B. Nagar P.S. Case No. 82/2019 with the condition that the father of the petitioners shall furnish an undertaking that while the petitioners are on bail, they will not allow the petitioners to come in company/association with any criminal or anti social elements that they will take proper care of the petitioners. Further the petitioners will be produced as and when required by the Court below and shall cooperate during the trial.

(Sudhir Singh, J)

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