

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.301 of 2022

Arising Out of PS. Case No.-100 Year-2021 Thana- MAHISHI District- Saharsa

XXX S/o Santosh Kumar @ Santosh Yadav Resident of Village - Lakhmi,
P.S. Mahishi, Dist.- Saharsa.

... .. Petitioner

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Petitioner/s	:	Mr. Rajiv Kumar Verma, Sr. Advocate Mr.Rohan Verma, Advocate
For the Respondent/s	:	Mr.Pranav Kumar, APP

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

5 28-07-2022 Heard Mr. Rajiv Kumar Verma, learned senior
counsel for the petitioner and Mr. Pranav Kumar, learned A.P.P.
for the State.

The petitioner, in the present case, is seeking setting
aside or the order/judgment dated 21.02.2022 passed by learned
Additional Sessions Judge - 1st – cum – Special Judge (Children
Court), Saharsa in Cr. Appeal No. 03/2022 whereby an order
dated 30.09.2021 passed by learned Juvenile Justice Board in
J.J.B. No. 150/2021 arising out of Mahishi P.S. Case No.
100/2021 (Saharsa) rejecting the prayer for bail of the petitioner
has been affirmed.

In course of hearing, learned senior counsel for the
petitioner has produced the certified copy of the order dated
27.07.2021 by which the Juvenile Justice Board, Saharsa had



declared that at the time of commission of the offence the petitioner was not mentally competent to understand the nature of crime.

Learned senior counsel submits that as per the prosecution story, the alleged occurrence in which this petitioner is said to have fired took place in course of scuffle on account of a petty dispute.

Learned senior counsel submits that the family of the petitioner is involved in politics and his father was earlier Up-Mukhiya and because of such political rivalry the petitioner has been falsely implicated in this case.

It is further submitted that in course of social investigation report of the petitioner the Probation Officer has noticed that the behaviour of the petitioner was normal, he maintained the discipline and had passed the matriculation examination whereafter he has been admitted in Plus Two school. The Probation Officer has found that the petitioner has otherwise no criminal antecedent, though one of his relatives Ankit Choudhary who is an accused in this case is wanted in another case. The friends of the petitioner did not disclose anything wrong against the petitioner.

Learned senior counsel submits that in view of the



order dated 27.07.2021 passed by the learned Board and the same being not under challenged in any competent court of law, the maximum period for which the petitioner may be kept in the observation home may be three years only, whereas in the present case the petitioner has been in the observation home since 08.07.2021, and, at this stage, his father is ready to stand as a surety and furnish an undertaking that if released on bail he will ensure that the petitioner remains connected with his studies and does not fall in bad company. In case he is found getting involved in any offence it will be his responsibility to inform the nearest police station.

Learned senior counsel has further relied upon a Division Bench judgment of this Court in the case of **Lalu Kumar and Ors. Vs. The State of Bihar reported in 2019 (4) PLJR 833** in which it has been held that classification of the offences under the bailable and non-bailable sections would not be relevant for purpose of grant of bail to a juvenile and the prayer for bail of a juvenile may be rejected only under one of the three conditions as under:-

- “(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 physiological danger; and
- (iii) The release would defeat the ends of justice.”



Mr. Pranav Kumar, learned A.P.P. for the State has though opposed the prayer for bail of the petitioner but does not dispute Annexure '3' to the present application which categorically shows that the Board has carried out an assessment of the mental and physical condition of the petitioner and found that he is neither physically competent nor mentally capable of understanding the nature of the offence allegedly committed by him.

Having regard to the facts and circumstances of the case, the finding of the learned J.J.B. in its order dated 27.07.2021, the social investigation report not disclosing any adverse thing against the petitioner and further that his father is ready to stand as a surety and furnish an undertaking as stated above as also following the spirit of section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015 and in view of the judgment of the Hon'ble Division Bench of this Court in the case of **Lalu Kumar** (supra), this court sets-aside the impugned judgment and directs release of the petitioner on bail on furnishing bail bond of Rs. 25,000/- (Rupees Twenty Five Thousand) with two sureties of the like amount each to the satisfaction of learned Additional Sessions Judge – 1 – cum – Special Judge (Children Court), Saharsa in connection with



Cr.Appeal No. 03/2022 (arising out of Mahishi P.S. Case No. 100 of 2021).

One of the sureties should be the father of the petitioner and he will also furnish an undertaking that if released on bail, the petitioner shall not be allowed to come in contact of any bad element and in case the petitioner indulges in any unlawful act, he will inform it to the jurisdictional police station.

The Probation Officer shall keep on visiting the place of the petitioner and shall submit periodical report to the Juvenile Justice Board, Saharsa as regards the conduct of the petitioner. If anything adverse is found against the petitioner, the same will also be reported to the Board for necessary action.

Certified copy of the order will be made available only after removal of the defects, as pointed out by office.

Let the certified copy of order dated 27.07.2021 be remained on the record.

(Rajeev Ranjan Prasad, J.)

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Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.

