

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.298 of 2022**

Arising Out of PS. Case No.-261 Year-2017 Thana- GOPALGANJ TOWN District-
Gopalganj

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Javed @ Javed Akhtar @ Akhtar Ansari, aged about 18 years (Male), S/o
Akhtar Hussain, Resident of Village- Bahra Tola Chawhi Khas, P.S.-
Manjhagadh, District- Gopalganj.

... .. Petitioner

Versus

The State of Bihar

... .. Respondent

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Appearance :

For the Petitioner : Mr. Arbind Kumar Singh, Advocate
For the Respondent : Mr. Tarun Prasad Mandal, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
ORAL ORDER

3 24-08-2022 Heard learned counsel for the petitioner and learned
A.P.P. for the State.

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

This criminal revision application has been preferred
against the order dated 24.02.2021, passed by learned
Additional District & Sessions Judge, Ist, Gopalganj, in
Criminal Appeal No. 13/2020, whereby the appeal filed by the
petitioner against the order dated 02.03.2020, passed by learned
Juvenile Justice Board, Gopalganj, was dismissed whereby and
whereunder the learned Juvenile Justice Board, Gopalganj, has
rejected the prayer for bail of the petitioner in connection with



Gopalganj Sadar P.S. Case No. 261/2017, registered under Sections 302 and 120(B) of the I.P.C.

The facts of the case, in brief, is that on 26.06.2017 at about 5.00 P.M., the son of the informant, namely, Babu Hussain was present at his house, in the meantime, Saheb, Molazim, Akhtar, Javed (petitioner), Saddam Hussain and Tajuddin Shah and 10-15 unknown came and took the informant's son on the pretext of watching movie at Janta Cinema, Gopalganj with them. While watching movie in the Theatre they assaulted with knife on the body of the informant's son, as a result of which, he fell down in the Theatre. In the meantime, the nephew of the informant saw the occurrence and took Babu Hussain to hospital, where in course of treatment, he died. It is further stated that two days before this occurrence, Rafique Shah, Mehrun Nesha had threatened to kill the informant's son.

Learned counsel for the petitioner submits that the petitioner is a juvenile and is in Remand Home since 12.12.2019 i.e., for a period of about two years and nine months. 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. There is no specific allegation against the petitioner. The



specific allegation is against the co-accused as per the statement of the witness recorded in paragraph no. 39 of the case diary. Except for this, there is no other substantive evidence to suggest the implication of the petitioner in the present case. Learned counsel has submitted that as per Section 18(g) of the Juvenile Justice Act, the maximum sentence which can be awarded to a juvenile is to direct the juvenile to be sent to a Special Home, for such period, not exceeding three years. It has further been submitted that the petitioner has remained in custody approximately for 2 ½ years. He further submits that the mother of the petitioner is ready to furnish an undertaking that while on bail she 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)* wherein 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.

By order dated 06.07.2022, a report was called for from the learned court below regarding the present stage of the case. It has been reported that none of the prosecution witnesses have been examined till date. There is no chance of trial being concluded in near future.

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 06.07.2022. 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 24.02.2021, passed by learned Additional District & Sessions Judge, Ist, Gopalganj, in Criminal Appeal No. 13/2020, as well as the order dated 02.03.2020, passed by learned Juvenile Justice Board, Gopalganj, in connection with Gopalganj Sadar P.S. Case No. 261 of 2017, are set aside.

Let the petitioner, who has already been declared juvenile by the learned Juvenile Justice Board, be released in



favour of his mother on execution of surety bond of Rs. 10,000/- (Rupees Ten Thousand Only), to the satisfaction of learned Juvenile Justice Board, Gopalganj, in connection with Gopalganj Sadar P.S. Case No. 261/2017, with the condition that, the mother of the petitioner shall furnish an undertaking that while the petitioner is on bail, she will not allow the petitioner to come in company/association with any criminal or anti-social element and that she 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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