

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.2751 of 2021

Arising Out of PS. Case No.-85 Year-2020 Thana- BELA District- Sitamarhi

Ritesh Kumar @ Dhyani Sah, aged about 17 years 10 months and 2 days (Male), Son of Rohit Sah, R/O Village- Vishnupur, Telihai Tola P.S.- Bela, Dist.- Sitamarhi through his father Rohit Sah, Son of Late Chulahi Sah, R/O Village- Vishnupur, Telihai Tola, P.S.- Bela, Dist.- Sitamarhi.

... .. Appellant

Versus

The State Of Bihar

... .. Respondent

Appearance :

For the Appellant : Mr. Ashok Kumar Jha, Advocate
For the Respondent : Mr. Jai Narain Thakur, 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 17.03.2021, whereby and whereunder the learned Ist Additional Sessions Judge-cum-Special Judge, Children's Court, Sitamarhi, has rejected the prayer for bail of the appellant in connection with Bela P.S. Case No. 85 of 2020 registered for



the offence under Sections 341, 342, 323, 354(B), 504/34 of the I.P.C. and Section 4 of the POCSO Act.

The facts of the case, in brief, is that the daughter of the informant, aged about 11 years, went to the field to fetch cattle feed when the appellant and Suraj Kumar Mahto(co-accused) alongwith 8-10 other unknown persons came near his daughter and started making her video and when she opposed, all of them, lifted and took her to *Teliahi Tola*. Then her father got the information who informed Bela Police Station and the police officials came there after 3-4 hours but she was released prior to the arrival of the police officials. They abused her by calling out filthy words and they also molested her and also threatened her that if she discloses anything about the occurrence, she would be killed.

It has been submitted on behalf of the appellant that the appellant is a juvenile and is in Remand Home since 13.08.2020. 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 brother 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. The Probation Officer in his report has reported that the appellant is not in company of any criminal or anti-social element. Further, he requires counselling and proper guidance.

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 17.03.2021, passed by learned Ist Additional Sessions Judge-cum-Special Judge, Children's Court, Sitamarhi in connection with Bela P.S. Case No. 85 of 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 brother on execution of surety bond of Rs. 10,000/- (Rupees Ten Thousand Only), to the satisfaction of learned Ist Additional Sessions Judge-cum-Special Judge, Children's Court, Sitamarhi, in connection with Bela P.S. Case No. 85 of 2020, with the condition that, the brother 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 court below and shall co-operate in the trial.

(Sudhir Singh, J)

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