

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.355 of 2022

Arising Out of PS. Case No.-621 Year-2020 Thana- SAHARSA SADAR District- Saharsa

XXX, Son of Kalyan Choudhary @ Kalyan Kumar through Kalyan Choudhary @ Kalyan Kumar, Son of Narayan Choudhary, in the capacity of father, natural guardian of minor, at present resident of Gangjala- Islamiya Chowk, Ward No. 16, Police Station - Saharsa Sadar, District - Saharsa.

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Ranjit Kumar Singh, Advocate
For the Respondent/s : Ms.Gulnar Begum, APP

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

7 13-09-2022 Heard learned counsel for the petitioner and Ms. Gulnar Begum, learned APP for the State.

Petitioner in the present case is seeking setting aside of the impugned judgment dated 24.08.2021 passed by the learned Additional Sessions Judge-I-cum-Special Judge (Children Court), Saharsa in Cr.Appeal No.07 of 2021 arising out of Saharsa Sadar P.S. Case No.621 of 2020 registered for the offences under Sections 147, 148, 149, 341, 323, 302 and 120(B) of the Indian Penal Code read with Section 27 of the Arms Act whereby and whereunder the learned Sessions Judge has been pleased to affirm the order dated 22.04.2021 passed by the learned Principal Magistrate, J.J.B. in JJB No.52 of 2021 by which the prayer for grant of regular bail to the petitioner has been rejected.



As per the direction of this Court, the complete records of enquiry conducted by the learned Juvenile Justice Board in the matter of declaration of the juvenility of the petitioner has been received.

Learned APP for the State submits that the learned Juvenile Justice Board has declared the juvenility on the basis of the date of birth mentioned in the school admission register and the same has been proved by the headmaster of the concerned school. Learned APP, therefore submits that the age determined by the learned Juvenile Justice Board is not in dispute and the same may be accepted. The learned Juvenile Justice Board has declared the age of the petitioner as 15 years 7 months and 19 days on the alleged date of occurrence.

Learned counsel for the petitioner submits that it is a case of false implication of the petitioner. The deceased boy was called by giving a mobile call and the person who gave the said mobile call is one Abhishek Yadav, son of Kundan Yadav. On his request the deceased had gone to Baijnathpur Chowk. It is submitted that in the FIR, altogether 7 persons are named and it is alleged that the son of the informant was shot dead by this petitioner.

Learned counsel submits that there is no eye witness



to the alleged occurrence and at least the informant is not an eye witness of the alleged occurrence. In course of investigation, no independent material has come to suggest that this petitioner is the assailant. No recovery has been made at his instance.

Learned counsel further submits that since the petitioner has been found aged below 16 years, his case is to be enquired into by the learned Juvenile Justice Board and Section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2015 could not be attracted.

Learned counsel further submits that the petitioner is in the observation home since 27.08.2020, therefore he has already stayed there for two years. According to him, the social investigation report says that he was studying in the Zila School at Saharsa and he had shown his inclination towards his studies. He happened to be the son of a ward councillor and because of the political rivalry in the village he has been falsely implicated so much so that in Saur Bazar P.S. Case No.446 of 2020 even though the accused is one Devashish Kumar, son of Dinesh Kumar Yadav, this petitioner has been shown to be the said Devashish which is not correct and in this regard he has stated that he is not the said Devashish Kumar. The learned Juvenile Justice Board has already closed Saharsa Sadar P.S. Case



No.897 of 2019 in which the petitioner was made accused. The only case thus remains is Saharsa Sadar P.S. Case No.272 of 2020 wherein the petitioner has been falsely implicated.

It is his submission that no complaint against the behavioural pattern of the petitioner has been shown in the social investigation report and if released on bail his father is ready to stand as surety and 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.

Ms. Gulnar Begum, learned APP for the State has though opposed the prayer for bail of the petitioner, but after going through the social investigation report, learned APP submits that a mention has been made in the report about the inclination of the petitioner towards studies and further that the neighbours of the petitioner have not made any complaint against his behavioural conduct.

After going through the case diary, learned APP submits that in the case diary there is no specific material showing that there is any eye witness to the alleged occurrence and further learned APP submits that no recovery of any firm



arm weapon has been made from the possession of the petitioner.

In the given facts and circumstances, considering the juvenility of the petitioner, he is below 16 years of age and that he has already remained in the observation home for over two years, his father is also ready to stand as surety and 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 as also following the spirit of Section 12 of Juvenile Justice (Care and Protection of Children) Act, 2015 and in view of the exceptions carved out by the Hon'ble Division Bench of this Court in the case of **Lalu Kumar and Ors. Vs. The State of Bihar** reported in **2019(4) PLJR 833** 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.”



this Court sets aside the impugned order and directs release of the petitioner above named on bail on furnishing bail bond of Rs. 25,000/- (Rupees Twenty Five Thousand only) with two sureties of the like amount each to the satisfaction of learned Juvenile Justice Board, Saharsa in connection with Saharsa P.S. Case No.621 of 2020.

One of the bailors 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.

The application stands disposed of accordingly.

(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'.

