

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.2908 of 2021**

Arising Out of PS. Case No.-54 Year-2021 Thana- KUCHAIKOTE District- Gopalganj

Vishal Kumar @ Vishal Kumar Kushwaha S/O Srikant Kushwaha @ Srikant Kumar Kushwaha Under Guardianship Of His Father Srikant Kushwaha @ Srikant Kumar Kushwaha, S/O Swaminath Prasad Kushwaha, R/O Village-Rampur Madho, P.S-Kuchaikot, District-Gopalganj.

... .. Appellant

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Ranjeet Kumar Pandey

For the Respondent/s : Mr.Zeyaul Hoda, APP

**CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
ORAL ORDER**

3 01-02-2022 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 counsel for the State through virtual mode.

This criminal appeal has been preferred against the judgment dated 31.05.2021 passed by learned A.D.J.-I-cum-Special Court (Children’s Court), Gopalganj by which the prayer for grant of bail of the appellant has been rejected in connection with Kuchaikot P.S. Case No. 54/2021 registered for offences under Sections 364 and 120B of the Indian Penal Code in which charge-sheet has been submitted under sections 364,



302, 201, 120B/34 of the Indian Penal Code.

The prosecution story, in brief is that the nephew of the appellant went along with appellant and did not return and later his dead body was recovered.

It has been submitted on behalf of the appellant that the appellant is in custody since 03.02.2021. Charge-sheet has already been submitted in the present case. The appellant has no criminal antecedent. The name of the appellant has transpired merely on the basis of suspicion. Except for suspicion, there is no other substantive evidence to suggest the implication of the appellant in the present case. It has further been submitted that other co-accused persons, having similar allegation, have been granted bail by Coordinate Benches of this Court vide Annexure-2 series to the supplementary affidavit filed on behalf of the appellant. It is further submitted that the father of the appellant is ready to furnish an undertaking that while on bail, he will not allow the appellant to associate with criminals or any anti-social elements. The appellant has 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.”

On behalf of the State and the learned counsel for the informant, it has been submitted that the petitioner is named in the F.I.R. and as per paragraph 22 of the case diary, the confession of the appellant along with the confession of other co-accused had led to the recovery of the mobile phone of the deceased and the same is admissible piece of evidence.

From perusal of the social investigation report, it appears that no adverse finding has come against the appellant. The neighbours have not made any complaint against the



appellant rather they have stated that there is no impediment in reformation of the appellant.

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 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 fact and circumstances as also the social investigation report coupled with the position of law as stated, the present criminal appeal is allowed and the order dated 31.05.2021 passed by learned A.D.J.-I-cum- Special Court (Children's Court), Gopalganj in connection with Kuchaikot P.S. Case No. 54/2021, is set aside.

Let the appellant, who has already been declared juvenile by the learned Juvenile Justice Board, be released in favour of father of the appellant on execution of surety bond of Rs. 10,000/- (ten thousand) to the satisfaction of learned A.D.J.-I-cum- Special Court (Children's Court), Gopalganj in Kuchaikot P.S. Case No. 54/2021 with the condition that the



the father 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 elements 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 cooperate during the trial.

(Sudhir Singh, J)

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