

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.3380 of 2021

In
CRIMINAL REVISION No.255 of 2021

Arising Out of PS. Case No.-412 Year-2018 Thana- BAGHA District- West Champaran

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SUMIT CHAUDHARY @ SUMIT KUMAR S/o Amarjeet Chaudhary @
Amarjeet Kurmi Resident of Barwal, Ward No. 06, P.S.- Bagaha (Pathkhauli),
District- West Champaran

... .. Appellant

Versus

1. THE STATE OF BIHAR
2. Dhanawati Devi Arjun Paswan Village-Borwal,P.S-Bagaha(Pathkhauli)

... .. Respondent

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Appearance :

For the Appellant/s	:	Mr.Zainul Abedin, Advocate
For the Respondent/s	:	Mr. Sadanand Paswan, APP
		Mr. Shiv Kumar Dwivedi, Adv.

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CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
ORAL ORDER

6 20-05-2022 Heard learned counsel for the appellant and the State
through virtual mode.

Learned counsel for the appellant is directed to remove the
defect(s), as pointed out by the office, within a period of four weeks.

The appellant has challenged the order dated 16-03-2020
passed by learned Ist Additional Sessions Judge-cum-Special Judge
(SC/ST & POCSO Act)-cum-Children Court, Bettiah, West
Champaran whereby and whereunder the learned Ist Additional
Sessions Judge-cum-Special Judge (SC/ST & POCSO Act)-cum-
Children Court, Bettiah, West Champaran has rejected the prayer for
bail of the appellant in connection with Special Case No. 01 of 2019
arising out of Bagaha (Pathkhauli) P.S. Case No. 412 of 2018



registered for the offences under Section-376 of the Indian Penal Code and 3(1)(w)(e) SC/ST Act.

Allegation against the appellant is of committing rape upon the three years old daughter of the informant.

It has been submitted on behalf of the appellant that the appellant is in custody since 19-08-2018 and has got no criminal antecedent. There is no allegation of tampering of witnesses alleged against the appellant. The appellant has falsely been implicated in the present case. From perusal of the medical report of the victim, it appears that no any injury was found on the private parts or on person of the victim. Further, the doctor has opined that there was no sign of recent sexual assault. It has further been submitted that the appellant though declared as juvenile on the date of occurrence, is in judicial custody for more than three and a half years. Learned counsel for the appellant further submits 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 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)***, wherein Division Bench of this Hon'ble Court has held as under:

“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 released 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 Spl. P.P. for the State is present and has opposed the prayer for bail of the appellant.

Having regard to the facts and circumstances of the case, Social Investigation Report of the appellant was called for from the concerned Probation Officer. The Probation Officer in his report has reported that the family of the appellant has never been involved in any criminal activity. The neighbours of the appellant have given a



general observation and nothing adverse has been stated against the appellant or his family members. The report does not reveal that there is any material to substantiate that in the event of grant of bail, the appellant is likely to go into association of known criminals or any anti-social elements.

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 persons 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.

Considering the facts and circumstances of the case as well as the findings of the Probation Officer in the Social Investigation Report of the appellant, the proposition of law as stated above and the period of custody already undergone by the appellant, this criminal appeal is allowed and the order dated 16-03-2020 passed by learned Ist Additional Sessions Judge-cum-Special Judge (SC/ST & POCSO Act)-cum-Children Court, Bettiah, West Champaran in connection with Special Case No. 01 of 2019 arising out of Bagaha (Pathkhauli) P.S. Case No. 412 of 2018 is set aside.

Let the appellant who has already been declared juvenile by the learned Juvenile Justice Board, be released in favour of his father on execution of surety bond of Rs. 10,000/- (ten thousand) to



the satisfaction of learned Ist Additional Sessions Judge-cum-Special Judge (SC/ST & POCSO Act)-cum-Children Court, Bettiah, West Champaran in connection with Special Case No. 01 of 2019 arising out of Bagaha (Pathkhauri) P.S. Case No. 412 of 2018 with the condition that the father of the appellant shall furnish an undertaking that while the appellant is on bail, will not allow the appellant to come in company/association with any criminal or anti-social elements and 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 during the trial.

(Sudhir Singh, J)

A.K.V.//-

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