

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.3491 of 2021**

Arising Out of PS. Case No.-554 Year-2019 Thana- GARKHA District- Saran

MD. SHAMSHAD @ SHAMSHAD ALI Son of Shazeed Miyan @ Md. Sahjad Alam Resident of Village- Thikha, P.S.- Garkha, District- Saran.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Rudra Deo, Advocate

For the Respondent/s : Mr.A.G

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

3 07-03-2022

Reg: I.A. No.01 of 2021

The present interlocutory application has been filed for condoning the delay in filing the present criminal appeal.

For the reasons stated in the application and the submissions made in support thereof, the delay in filing the present criminal appeal is condoned.

I.A. No.01 of 2021 stands allowed.

Reg: Criminal Appeal (SJ) No.3491 of 2021

Heard learned counsel for the appellant and learned Spl. P.P. for the State.

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

This criminal appeal has been preferred against the order dated 22.06.2021 passed in C.C. case No.07/2020,



whereby and whereunder the learned Additional Sessions Judge 1st-cum-Special Judge, Children Court, Saran at Chapra has rejected the prayer for bail of the appellant in connection with arising out of Garkha P.S. case No.554 of 2019 registered for the offences under Sections 376(D) of the Indian Penal Code and Section 6 of POCSO Act.

The prosecution case, in brief, is that the accused persons including the appellant committed rape upon the victim.

It has been submitted on behalf of the appellant that the appellant is in custody since 09.05.2020 and has got no criminal antecedent. Charge sheet has been submitted in the present case. There is no allegation of tampering of witnesses alleged against the appellant. The appellant has falsely been implicated in the present case due to village politics. The allegation of commission of rape is against the co-accused. The medical examination report also does not show any substantive evidence to show that the victim was subjected to commission of rape. Learned counsel for the appellant further 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. 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.”

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 neighbours of the appellant have stated that the appellant bears clean and good character. Further 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 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.

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 and the proposition of law as stated above, this criminal appeal is allowed and the order dated 22.06.2021 passed in C.C. case No.07/2020 arising out of Garkha P.S. case No.554 of 2019 by the learned Additional Sessions Judge 1st-cum-Special Judge, Children Court, Saran at Chapra is set aside.

Let the appellant, who has already been declared juvenile by the learned Juvenile Justice Board, be released in favour of brother of the appellant on execution of surety bond of Rs.10,000/- (Rupees ten thousand) to the satisfaction of the learned Additional Sessions Judge 1st-cum-Special Judge, Children Court, Saran at Chapra in connection with C.C. case No.07/2020 arising out of Garkha P.S. case No.554 of 2019 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 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 co-operate during the trial.

Narendra/-

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(Sudhir Singh, J)

