

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.1240 of 2021**

Arising Out of PS. Case No.-227 Year-2020 Thana- KAHALGAON District- Bhagalpur

NITIN KUMAR S/o Amrendra Mandal R/o village- Basbitadih, P.S.-
Dhoraiya, District- Banka. At present Grandson of Anil Kumar Mandal @
Anil Mandal, S/o Buttan Mandal, R/o village- Kushaha, P.S.- Ghogha,
District- Bhagalpur

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Brij Nandad Prasad, Advocate
For the Respondent/s : Mr. Brij Nandan Prasad, APP

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
ORAL ORDER

3 16-02-2022 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
APP for the State through virtual mode.

This criminal appeal has been preferred against the
order dated 08.07.2020 passed by learned Court of Special
Judge (Children), Bhagalpur in Special (Children) No. 03/2020
whereby and whereunder the learned Special Judge has rejected
the prayer for bail of the appellant in connection with
Kahalgaon P.S. Case No. 227/2020 registered for the offences
under sections 376 of the Indian Penal Code and 4 of POCSO



Act.

The prosecution story, in brief is that the petitioner and the informant both having friendly relation, established physical relationship with the informant for two years.

It has been submitted on behalf of the appellant that the appellant is in custody since 04.04.2020 and has got no criminal antecedent. Charge-sheet has been submitted in the present case. There is no allegation of tampering alleged against the appellant. As per the allegation, the appellant is said to have established physical relationship for continuous two years. It has been submitted that assuming the allegation to be true, at best, it was a consensual relationship and no offence under Section 376 IPC is made out. 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)* 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.

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 appellant has been falsely implicated due to village politics. He is involved in study and recreational activities. He takes care of his maternal grandmother. Further, it has been opined that the appellant should pursue his further studies while staying at his home. 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 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 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 judgment dated order dated 08.07.2020 passed by learned Court of Special Judge (Children), Bhagalpur in Special (Children) No. 03/2020, arising out of Kahalgaon P.S. Case No. 227/2020, is set aside.

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



(ten thousand) to the satisfaction of learned Special Judge (Children), Bhagalpur arising out of Kahalgaon P.S. Case No. 227/2020 with the condition that 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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