

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.3990 of 2021**

Arising Out of PS. Case No.-74 Year-2021 Thana- PURNEA SADAR District- Purnia

Md. Sakir @ Md. Shakir Son Of Alimuddin @ Md. Alimuddin Through His
Father Alimudding @ Md. Alimuddin, Aged About 48 Years(Male) Son Of
Usman, R/O Village- Chandi Aga Tola, P.S.- Muffasil, Dist.- Purnea

... .. Appellant/s

Versus

THE STATE OF BIHAR

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. N.K. Agrawal, Sr. Advocate Dr. Bidhu Ranjan, Advocate Mrs. Preety Kunwar, Advocate
For the Respondent/s	:	Mr. Abha Singh, Spl. P.P.

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
ORAL ORDER

3 07-03-2022 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 17.08.2021 passed in Special Kishore case
No.02/2021/CIS No.02 of 2021, whereby and whereunder the
learned 1st Additional Sessions Judge-cum-Special Judge,
Children's Court, Purnea has rejected the prayer for bail of the
appellant in connection with Sadar Muffasil P.S. case No.74 of
2021 registered for the offences under Section 376 of the Indian



Penal Code and Sections 4/6 of POCSO Act.

The prosecution case, in brief, is that the informant saw her daughter in nude condition in the field. The daughter of the informant disclosed that she was raped by the appellant.

It has been submitted on behalf of the appellant that the appellant is in custody since 17.02.2021 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. The medical examination report of the victim does not show any sign of rape. The case has been instituted after two days of the alleged occurrence. Delay has not been explained by the prosecution. 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 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 appellant is studying and intends to pursue his further studies. 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 17.08.2021 passed by the learned 1st Additional Sessions Judge-cum-Special Judge, Children's Court, Purnea in connection with Special Kishore case No.02/2021/CIS No.02 of 2021 arising out of Sadar Muffasil P.S. case No.74 of 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/- (Rupees ten thousand) to the satisfaction of the learned 1st Additional Sessions Judge-cum-Special Judge, Children's Court, Purnea in connection with Special Kishore case No.02/2021/CIS No.02 of 2021 arising out of Sadar Muffasil P.S. case No.74 of 2021 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 co-operate during the trial.

(Sudhir Singh, J)

Narendra/-

U		T	
---	--	---	--

