

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.612 of 2021

Arising Out of PS. Case No.-493 Year-2020 Thana- WAJIRGANJ District- Gaya

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Amit Kumar S/O Kapil Malakar R/O Village-Dakhingaown, P.S-Wazirganj,
District-Gaya, Under The Guardianship Of His Elder Brother Namely
Chandan Kumar, S/O Kapil Malakar, R/O Village-Dakhingaown, P.S-
Wazirganj, District-Gaya.

... .. Petitioner

Versus

The State Of Bihar

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Manish Kumar No2, Advocate

For the Respondent/s : Mr.Vinod Shanker Modi, APP

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CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
ORAL ORDER

3 20-05-2022 Heard learned counsel for the petitioner and learned
APP for the State through virtual mode.

This criminal revision application has been preferred against the judgment dated 10.08.2021 passed in Cr. Appeal (Juvenile) No. 40 of 2021 (C.I.S.) by which learned Special Judge, Children Court, Gaya has affirmed the order dated 30.06.2021 passed in G.R. No. 5269/20, Misc. No. 192/20 by which learned Juvenile Justice Board, Gaya has rejected the prayer for bail of the petitioner in connection with Wazirganj P.S. Case No. 493/20 registered for the offences under sections 302, 201 and 34 of the Indian Penal Code.

The prosecution story, in brief is that the son of the informant went missing and later his dead body was recovered



from the pond.

It has been submitted on behalf of the petitioner that the petitioner is in custody since 13.11.2020 and has got no criminal antecedent. Charge-sheet has been submitted in the present case. There is no allegation of tampering alleged against the petitioner. The petitioner has falsely been implicated in the present case. The petitioner is not named in the F.I.R. The name of the petitioner has transpired in the present case on the basis of confessional statement of co-accused recorded under Section 161 of Cr.P.C. before the police. Except for this, there is no other substantive evidence to suggest the implication of the petitioner in the present case. There is no recovery of any incriminating articles from the possession of the petitioner. There is no eye witness to the alleged occurrence nor there is any circumstantial evidence to suggest the participation of the petitioner in the alleged occurrence. Learned counsel for the petitioner further submits that the elder brother of the petitioner is ready to furnish an undertaking that while on bail, he will not allow the petitioner to associate with criminals or anti-social elements. The petitioner 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 petitioner.

Having regard to the facts and circumstances of the case, Social Investigation Report of the petitioner was called for from the concerned Probation Officer. The Probation Officer in his report has reported that the petitioner has cordial relationship with his parents and family members. The neighbours of the



petitioner have stated that the petitioner bears calm and good behaviour. It has been suggested that taking into account the age and future of the petitioner, he may be released under the guidance of the Probation Officer. Further the report does not reveal that there is any material to substantiate that in the event of grant of bail, the petitioner 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 petitioner 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 petitioner and the proposition of law as stated above, this criminal revision application is allowed and the judgment dated 10.08.2021 passed in Cr.Appeal (Juvenile) No. 40 of 2021 (C.I.S.) by learned Special Judge, Children Court, Gaya and the order dated order dated 30.06.2021 passed



in G.R. No. 5269/20, Misc. No. 192/20 by learned Juvenile Justice Board, Gaya are set aside.

Let the petitioner, who has already been declared juvenile by the learned Juvenile Justice Board, be released in favour of elder brother on execution of surety bond of Rs. 10,000/- (ten thousand) to the satisfaction of learned Juvenile Justice Board, Gaya in 5269/20, Misc. No. 192/20, arising out of Wazirganj P.S. Case No. 493 of 2020 with the condition that the elder brother of the petitioner shall furnish an undertaking that while the petitioner is on bail, he will not allow the petitioner to come in company/association with any criminal or anti social elements that he will take proper care of the petitioner. Further the petitioner will be produced as and when required by the Court below and shall cooperate during the trial.

(Sudhir Singh, J)

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