

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.4269 of 2021**

Arising Out of PS. Case No.-106 Year-2020 Thana- PARSAUNI District- Sitamarhi

JITENDRA KUMAR @ JITENDRA SAH SON OF ASHARFI SAH R/O
VILLAGE- KATHOUR URF BAIKUNTHPUR, P.S.- PARSAUNI,
DISTRICT- SITAMARHI, PIN CODE- 843325 (BIHAR)

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Uday Kumar, Advocate

For the Respondent/s : Mr. Syed Ashfaque Ahmad, APP

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

3 22-04-2022 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 03-09-
2021 passed by learned Ist Additional Sessions Judge-cum-
Special Judge (Children's Court), Sitamarhi whereby and
whereunder the learned Ist Additional Sessions Judge-cum-
Special Judge, (Children's Court), Sitamarhi has rejected the
prayer for grant of bail of the appellant in connection with
Parsauni P.S. Case No. 106 of 2020 registered for the offences
under Sections-147, 148, 149, 341, 323, 302 of the Indian Penal



Code.

Prosecution allegation in short is that the accused persons including the appellant committed murder of informant's father by assaulting him with lathi, danda.

It has been submitted on behalf of the appellant that the appellant is in custody since 22-12-2020 and has got no criminal antecedent. Charge sheet in this case has already been submitted. 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 FIR it appears that there is general and omnibus allegation of assault by lathi and danda upon the deceased against five accused persons. However, from, the postmortem report, it is evident that only one external injury in nature of abrasion was found on the body of the deceased. The postmortem report does not corroborate the allegation levelled in the FIR. Learned counsel for the appellant further submits that the mother of the appellant is ready to furnish an undertaking that while on bail, she 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 neighbours of the appellant have stated that the appellant has good behaviour. There is no problem in reformation of the appellant. Further the release of the appellant will be beneficial for development of the appellant. Moreover, 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 subatantive 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 03-09-2021 passed by the learned Ist Additional Sessions Judge-cum-Special Judge (Children's Court), Sitamarhi is set aside.

Let the appellant who has already been declared juvenile by the learned Juvenile Justice Board, be released in favour of his mother on execution of surety bond of Rs. 10,000/- (ten thousand) to the satisfaction of learned Ist Additional Sessions Judge-cum-Special Judge (Children's Court), Sitamarhi, in connection with Parsauni P.S. Case No. 106 of 2020 with the condition that the mother of the appellant shall furnish an undertaking that while the appellant is on bail, he/she will not allow the appellant to come in company/association with any criminal or anti-social elements and she 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)

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