

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.4260 of 2021

Arising Out of PS. Case No.-420 Year-2020 Thana- AMARPUR District- Banka

BIRU KUMAR Son of Chunchun Mandal Resident of Village - Gangapur
Garhel, P.S.- Amarpur, Distt.- Banka.

... .. Appellant/s

Versus

THE STATE OF BIHAR

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Praveen Kumar, Advocate
For the Respondent/s : Mr.A.G

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 23-09-
2021 passed by learned Ist Additional Sessions Judge-cum-
Children Court, Banka in connection with G.R. No. 2060 of
2020A (arising out of Amarpur P.S. Case No. 420 of 2020)
registered for the offences under Sections-147, 148, 149, 341,
323, 302, 307, 504, 506 of the Indian Penal Code whereby and
whereunder the learned Ist Additional Sessions Judge-cum-
Children Court, Banka has rejected the prayer for bail of the
appellant.



Prosecution allegation in short is that while the father of the informant was sitting at his door, 8-10 boys came near his door and started using filthy languages at which, the father of the informant asked not to do so. Thereafter, those boys including the appellant/petitioner started abusing the informant's father and also assaulted him. While the informant and his family members came to rescue, they were also assaulted. The father of the informant was assaulted with axe over his head who received injury and he was taken to hospital where the doctor declared him dead.

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. General and omnibus allegation has been made against the appellant. No specific overt act is alleged against the appellant. The specific overt act is against the co-accused Saurabh Kumar who is said to have assaulted the deceased. 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)***, 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 appellant is a student and his



involvement in the occurrence of murder is doubtful. Due to enmity and complicity, the appellant has been implicated in this case. It has been suggested that it is necessary for the appellant to rejoin his studies for his overall development. 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 persons 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 judgment dated 23-09-2021 passed by learned Ist Additional Sessions Judge-cum-Children Court, Banka in connection with



G.R. No. 2060 of 2020A (arising out of Amarpur P.S. Case No. 420 of 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 Additional Sessions Judge-Ist-cum-Children Court, Banka, in connection with G.R. No. 2060 of 2020A arising out of Amarpur P.S. Case No. 420 of 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 and 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)

A.K.V.//-

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