

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.656 of 2021

Arising Out of PS. Case No.-378 Year-2020 Thana- NAUBATPUR District- Patna

AMRESH KUMAR Son of Babu Singh @ Kunj Bihari Sharma @ Babu Kunj Bihari Sharma Resident of Village - Jinpura Dhobinkalanpur, P.s.- Bihta, Distt.- Patna, Under the Guardianship of his father Namely Babu Singh @ Kunj Bihari Sharma @ Babu Kunj bihari Sharma Son of Hirday Narayan Sharma, Resident of Village - Jinpura Dhobinkalanpur, P.s.- Bihta, Distt.- Patna.

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Manish Kumar No2, Advocate
For the Respondent/s : Mr. Navin Kumar Pandey, APP

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
ORAL ORDER

3 22-04-2022 Heard learned counsel for the petitioner and the State through virtual mode.

Learned counsel for the petitioner is directed to remove the defect(s), as pointed out by the office, within a period of four weeks.

This Criminal Revision has been preferred against the judgment dated 20-09-2021 passed by the learned Ist Additional Sessions Judge-cum-Special Judge (Children Court), Patna, in Criminal Appeal No. 65 of 2021, whereby and where under the court below has affirmed the order dated 12-03-2021 passed by learned Juvenile Justice Board, Patna in J.J.B. Case No. 437 of 2020, whereby learned Juvenile Justice Board, Patna has rejected the prayer for bail of the petitioner in connection with J.J.B. Case No.



437 of 2020 arising out of Naubatpur P.S. Case No. 378 of 2020, registered under Sections 8. 20(b)(ii)(c) of the Narcotic Drugs and Psychotropic Substance Act.

Allegation is that on the tip off, the police inspector-cum-officer in charge, Naubatpur police station along with police personnel reached at the place of occurrence. It is further alleged that feeling the arrival of police force, four persons having a bag each in their hand, tried to flee away coming out from a room of the school but with the help of police force, they were arrested. On search, total 21 kgs. of Ganja was recovered from the apprehended accused persons.

It has been submitted on behalf of the petitioner that the petitioner is in custody since 19-07-2020. There is no allegation of tampering of witnesses alleged against the petitioner. Out of total recovery of 21 kgs of Ganja, 4.7 kgs. of Ganja is said to have been recovered from possession of the petitioner. The same is below commercial quantity. Hence Section-37 of the NDPS Act is not attracted in the present case. There is no compliance of Sections-42 & 50 of the NDPS Act. Learned counsel for the petitioner further submits that the **father** 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)* wherein 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 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 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 on query from the neighbour and the people present there, the petitioner was said to be an obedient boy bearing a good character boy. Further from perusal of social investigation report, it appears that there is no apprehension of the petitioner getting into association of any bad society, if released on bail.

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 substantial 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 20-09-2021 by the learned Ist Additional Sessions Judge-cum-Special Judge (Children Court), Patna, in Criminal Appeal No. 65



of 2021, and the order dated 12-03-2021 passed by learned Juvenile Justice Board, Patna in J.J.B. Case No. 437 of 2020, arising out of Naubatpur P.S. Case No. 378 of 2020 are set aside.

Let the petitioner, 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 Juvenile Justice Board, Patna City in connection with J.J.B. Case No. 437 of 2020 arising out of Naubatpur P.S. Case No. 378 of 2020, with condition that father 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 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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