

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.4472 of 2021

Arising Out of PS. Case No.-97 Year-2021 Thana- MUSRIGHRARI District- Samastipur

BOBBY KUMAR Son of Sri Dinesh Kumar @ Dinesh Rai Resident of Village Nikaspur Ward No. 8, P.S. Tajpur, District Samastipur through his father, the legal guardian namely Dinesh Kumar @ Dinesh Rai, aged about 46 years, Son of Late Asharfi Rai, Resident of Village Nikaspur Ward No. 8, P.S. Tajpur, District - Samastipur.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Vaishnavi Singh, Advocate
For the Respondent/s : Mr. Zeyaul Hoda, 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 06-10-2021 passed by learned Ist Additional Sessions Judge-cum-Special Judge (Juvenile Justice Act), Samastipur whereby and whereunder the Ist Additional Sessions Judge-cum-Special Judge (Juvenile Justice Act), Samastipur has rejected the prayer for bail of the appellant in connection with Musarigharari P.S. Case No. 97 of 2021 registered for the offences under Section-



302, 120B of the Indian Penal Cod and 27 of the Arms Act.

Prosecution allegation in short is that the informant's husband was shot dead by named accused and two unknown persons.

It has been submitted on behalf of the appellant that the appellant is in custody since 13-08-2021 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. The appellant is not named in the FIR. His name has transpired in this case on the basis of confessional statement of the co-accused recorded under Section-161 of Cr.P.C. before the police. The informant is not an eye witness to the alleged occurrence. 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. Further he will also keep the appellant away from the main accused Himanshu Rai.

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 in friendship with similar age group children and has been made accused in this case as he happens to be relative of main accused Himanshu Rai. The participation of the appellant in the present case is doubtful. 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 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 06-10-2021 passed by learned Ist Additional Sessions Judge-cum-Special Judge (Juvenile Justice Act), Samastipur in connection with Musarigharari P.S. Case No. 97 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 his father on execution of surety bond of Rs. 10,000/-



(ten thousand) to the satisfaction of learned Ist Additional Sessions Judge-cum-Special Judge (Juvenile Justice Act), Samastipur, in connection with Musarigharari P.S. Case No. 97 of 2021 the condition that the father of the appellant shall furnish an undertaking that while the appellant is on bail, 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. He will also keep the appellant away from co-accused Himanshu Rai. 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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