

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.716 of 2021**

Arising Out of PS. Case No.-342 Year-2021 Thana- MASHRAK District- Saran

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KANHAIYA KUMAR @ KANHAIYA KUMAR RAM Son of Satan Ram
Resident of Village - Lakhanapur, P.s.- Mashrakh, Distt.- Saran.

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Rajesh Kumar, Advocate
For the Respondent/s : Mr.Jagdhar Prasad, 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.

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 application has been preferred
against the judgment dated 22.10.2021 passed in Criminal
Juvenile Appeal No.27/2021, whereby and whereunder the
learned 1st Additional Sessions Judge-cum-Children Court,
Saran at Chapra has affirmed the order dated 31.08.2021,
whereby learned Juvenile Justice Board, Saran at Chapra has
rejected the prayer for bail of the petitioner in connection with
Saran Chapra J.E. No.372/2021 arising out of Mashrakh P.S.
case No.342/2021 registered for the offences under Sections
302, 120B of the Indian Penal Code.



The prosecution case, in brief, is that the brother of the informant, namely, Aftab Alam received a phone call. Thereafter he went outside and later on his dead body was recovered.

It has been submitted on behalf of the petitioner that the petitioner is in custody since 22.07.2021 and has got no criminal antecedent. Charge sheet has been submitted in the present case. There is no allegation of tampering of witnesses alleged against the petitioner. The petitioner has falsely been implicated in the present case. The petitioner is not named in the F.I.R. His name has transpired in this case merely on the basis of suspicion. Except for suspicion, there is no other substantive evidence to suggest the implication of the petitioner in this case. Neither there is any eye witness to the alleged occurrence nor there is any circumstantial evidence to suggest the participation in the alleged occurrence. 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)**, 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 is pursuing his studies. The petitioner has cordial relationship with his parents and other family members. 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 22.10.2021 passed in Criminal Juvenile Appeal No.27/2021 by the learned 1st Additional Sessions Judge-cum-Children Court, Saran at Chapra and the order dated 31.08.2021 passed by the learned Juvenile Justice Board, Saran at Chapra in connection with Saran Chapra J.E. No.372/2021 arising out of Mashrakh P.S. case No.342/2021, are set aside.

Let the petitioner, who has already been declared juvenile by the learned Juvenile Justice Board, be released in favour of father on execution of surety bond of Rs.10,000/- (Rupees ten thousand) to the satisfaction of Juvenile Justice Board, Saran at Chapra in connection with Saran Chapra J.E. No.372/2021 arising out of Mashrakh P.S. case No.342/2021, with the condition that the 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 petitioner will be produced as and when required by the Court below and shall co-operate during the trial.

Narendra/-

(Sudhir Singh, J)

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