

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL APPEAL (SJ) No.4736 of 2021**

Arising Out of PS. Case No.-13 Year-2019 Thana- MAHILA P.S. District- Samastipur

RAKESH KUMAR Son of Upendar Ray Resident of Village - Jhahri  
(wrongly described in the F.I.R. as Bhauri), P.S. - Kalyanpur, Samastipur.

... .. Appellant

Versus

THE STATE OF BIHAR

... .. Respondent

**Appearance :**

For the Appellant/s : Mr. Ashhar Mustafa, Advocate  
For the Respondent/s : Mrs. Abha Singh, APP

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

3      20-05-2022                      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 18-08-  
2021 passed by learned Ist Additional Sessions Judge-cum-  
Special Judge (Children's Court), Samastipur whereby and  
whereunder the learned Ist Additional Sessions Judge-cum-  
Special Judge (Children's Court), Samastipur has rejected the  
prayer for bail of the appellant in connection with Samastipur  
(Mahila) P.S. Case No. 13 of 2019 registered for the offences  
under Section-376 of the Indian Penal Code, 1860 and Section-4  
of the POCSO Act, 2012.



Allegation against the appellant is of taking away the minor daughter of the informant to his house and of committing rape forcibly.

It has been submitted on behalf of the appellant that the appellant is in custody since 05-03-2019 and has got no criminal antecedent. There is no allegation of tampering of witnesses alleged against the appellant. The appellant has falsely been implicated in the present case. Charge sheet in this case has already been submitted. Due to dirty village politics, the appellant has been made accused in the present case. The appellant is in judicial custody for more than two and a half years without any substantive progress in the trial. Learned counsel for the appellant further submits that the elder brother 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. He further submits that the medical report supports the allegations levelled in the FIR.

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 he bears a good character and was pursuing his studies, when the said incident occurred. A few other neighbours have also stated that the appellant was performing good in his study and his behaviour was gentle. 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, the proposition of law as stated above and the period of custody undergone by the appellant, this criminal appeal is allowed and the judgment dated 18-08-2021 passed by learned Ist Additional Sessions Judge-cum-Special Judge (Children's Court), Samastipur in



connection with Samastipur (Mahila) P.S. Case No. 13 of 2019 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 (Children's Court), Samastipur in connection with Samastipur (Mahila) P.S. Case No. 13 of 2019 the condition that the elder brother 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. 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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