

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.105 of 2022

Arising Out of PS. Case No.-17 Year-2021 Thana- MOUZAHDIPUR District- Bhagalpur

XXXX S/o Gyandev Choudhary R/o village- Goradih, P.S.- Goradih, District- Bhagalpur, through his Mother/Guardian Smt. Kiran Devi, about 49 years, female, W/o Sri Gyandev Choudhary, R/o village- Goradih, P.S.- Goradih, District- Bhagalpur

... .. Petitioner/s

Versus

1. The State of Bihar
2. Sakichan Choudhary Son of Late Mahavir Choudhary R/o Sakullachak, P.S.- Babarganj, Dist.- Bhagalpur.

... .. Respondent/s

with

CRIMINAL REVISION No. 76 of 2022

Arising Out of PS. Case No.-17 Year-2021 Thana- MOUZAHDIPUR District- Bhagalpur

XXXX S/o Sri Shankar Choudhary Resident of Sakrullachack, P.S.- Babarganj (Mojahidpur), District- Bhagalpur, through his Mother/Guardian Smt. Kari Devi, about 65 years, Female, W/o Sri Shankar Choudhary, R/o Sakrullachack, P.S.- Babarganj (Mojahidpur), District- Bhagalpur

... .. Petitioner/s

Versus

1. The State of Bihar
2. Sakichan Choudhary S/O Late Mahavir Choudhary Resident of Village- Sakrullachak, P.S.- Babarganj, District- Bhagalpur.

... .. Respondent/s

Appearance :

(In CRIMINAL REVISION No. 105 of 2022)

For the Petitioner/s : Mr.Madan Mohan, Advocate

For the Respondent/s : Mr.Manoj Kumar, APP

(In CRIMINAL REVISION No. 76 of 2022)

For the Petitioner/s : Mr.Madan Mohan, Advocate

For the Respondent/s : Mr.Manoj Kumar, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

6 19-01-2023

(In CRIMINAL REVISION No. 105 of 2022)

Heard learned counsel appearing on behalf of the



petitioner and learned APP appearing on behalf of the State.

Proper steps were taken to serve notice upon informant as charge-sheet has been submitted under Section 14A(2) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. It is also submitted by learned SPP that informant has been informed through SSP Bhagalpur but failed to join present proceedings.

The present revision application is being preferred against order dated 22.11.2021 passed by learned 1st Additional Sessions Judge, Bhagalpur in Criminal Appeal No. 28 of 2021 affirming the order dated 16.08.2021 passed by the learned Juvenile Justice Board, Bhagalpur by which the learned Court refused to enlarge the petitioner on bail in connection with G.R. No. 233 of 2021 arising out of Babarganj P.S. Case No. 17 of 2021 registered for offence under Sections 147, 148, 149 and 302 of the Indian Penal Code and Section 27 of Arms Act.

The petitioner/revisionist, aged about 15 years 06 months and 13 days on the alleged date of occurrence i.e. 13.01.2021, is named in F.I.R., and is in custody/observation home since 02.02.2021.

The allegation against this petitioner is to commit murder of the son of informant along with other co-accused



persons by causing fire-arm injuries due to longstanding previous enmities.

Learned counsel appearing on behalf of the petitioner/revisionist submitted that longstanding previous enmities is an admitted position and as such, false implications cannot be ruled out. It is further submitted that the specific allegation to cause fatal fire arm injury is available against other co-accused persons, namely, Rahul Choudhary and Ajay Choudhary, whereas allegation against this petitioner is of general firing. It is also pointed out that other co-accused person has already been granted bail by one of the learned Co-ordinate Bench of this Court through Cr. Appeal(SJ) No. 515 of 2022 vide order dated 11.08.2022. It is submitted that nothing adverse can be gathered from Social Investigation Report of the petitioner/revisionist.

Learned counsel appearing on behalf of the petitioner/revisionist submitted that mother of the juvenile petitioner is ready to stand as a surety and furnish an undertaking that she will take care of the petitioner/revisionist and shall ensure his studies as well as that he would not fall in bad company and would take all possible care to connect him with the mainstream of the society and also to groom him to



become a good and law abiding citizen of this country.

Learned APP for the State, while opposing the prayer of bail fairly conceded the fact that specific allegation to cause fatal fire-arm injury is available against other co-accused, namely, Rahul Choudhary and Ajay Choudhary.

Having regard to the submission and materials showing that the petitioner has been adjudged juvenile aged about 15 years 06 months and 13 days approximately on the alleged date of occurrence, he has no criminal antecedent and the social investigation report of the petitioner is not showing any adverse material against him so as to dissuade this court for granting release of the petitioner on bail, as also that petitioner has remained in the Observation Home for more than one year and his mother is ready to stand as a surety and furnish an undertaking that if released on bail she will take care of the study of the petitioner and shall ensure that he does not fall in bad company and, in case, the petitioner indulges in any unlawful act, she will inform it to the jurisdictional police station as also following the spirit of section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015 and in view of the exceptions carved out by the Hon'ble Division Bench of this Court in the case of **Lalu Kumar and Ors. Vs. The State**



of Bihar reported in 2019 (4) PLJR 833 that classification of the offences under theailable and non-ailable sections would not be relevant for the purpose of grant of bail to a juvenile and the prayer for bail of a juvenile may be rejected only under one of the three conditions as under:-

*“(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 physiological danger; and
(iii) The release would defeat the ends of justice.”*

Accordingly, this court sets-aside the impugned order and directs release of the petitioner/revisionist on bail on furnishing bail bond of Rs.25,000/- (Rupees Twenty Five Thousand only) with two sureties of the like amount each to the satisfaction of learned Special Judge-cum-1st Additional Sessions Judge, Bhagalpur/concerned Court in connection with Babarganj P.S. Case No. 17 of 2021.

One of the sureties shall be the mother of the petitioner/revisionist and she will also furnish an undertaking in terms stated here-in-above.

The Probation Officer shall keep on visiting the place of the petitioner and shall submit periodical report to the



Juvenile Justice Board (J.J.B.), Bhagalpur, regarding conduct of the petitioner. If found anything adverse against this petitioner/revisionist, the same will also be reported to the Board for necessary action.

(In CRIMINAL REVISION No. 76 of 2022)

Heard learned counsel appearing on behalf of the petitioner and learned APP appearing on behalf of the State.

Proper steps were taken to serve notice upon informant as charge-sheet has been submitted under Section 14A(2) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. It is also submitted by learned SPP that informant has been informed through SSP Bhagalpur but failed to join present proceedings.

The present revision application is being preferred against order dated 22.11.2021 passed by learned 1st Additional Sessions Judge, Bhagalpur in Criminal Appeal No. 28 of 2021 affirming the order dated 16.08.2021 passed by the learned Juvenile Justice Board, Bhagalpur by which the learned Court refused to enlarge the petitioner on bail in connection with G.R. No. 233 of 2021 arising out of Babarganj P.S. Case No. 17 of 2021 registered for offence under Sections 147, 148, 149 and



302 of the Indian Penal Code and Section 27 of Arms Act.

The petitioner/revisionist, aged about 15 years and 07 months on the alleged date of occurrence i.e. 13.01.2021, is named in F.I.R., and is in custody/observation home since 05.03.2021.

The allegation against this petitioner is to commit murder of the son of informant along with other co-accused persons by causing fire-arm injuries due to longstanding previous enmities.

Learned counsel appearing on behalf of the petitioner/revisionist submitted that longstanding previous enmities is an admitted position and as such, false implications cannot be ruled out. It is further submitted that it cannot be said that specific allegation is available against this petitioner for the reason that the allegation of firing on the vital part of the body is also available against co-accused, namely, Ajay Choudhary. It is also pointed out that other co-accused person has already been granted bail by one of the learned Co-ordinate Bench of this Court through Cr. Appeal(SJ) No. 515 of 2022 vide order dated 11.08.2022. It is submitted that nothing adverse can be gathered from Social Investigation Report of the petitioner/revisionist.

Learned counsel appearing on behalf of the



petitioner/revisionist submitted that mother of the juvenile petitioner is ready to stand as a surety and furnish an undertaking that she will take care of the petitioner/revisionist and shall ensure his studies as well as that he would not fall in bad company and would take all possible care to connect him with the mainstream of the society and also to groom him to become a good and law abiding citizen of this country.

Learned APP for the State, while opposing the prayer of bail fairly conceded the fact that specific allegation to cause fatal fire-arm injury is also available against other co-accused, namely, Ajay Choudhary.

Having regard to the submission and materials showing that the petitioner has been adjudged juvenile aged about 15 years and 07 months approximately on the alleged date of occurrence, he has no criminal antecedent and the social investigation report of the petitioner is not showing any adverse material against him so as to dissuade this court for granting release of the petitioner on bail, as also that petitioner has remained in the Observation Home for more than one year and his mother is ready to stand as a surety and furnish an undertaking that if released on bail she will take care of the study of the petitioner and shall ensure that he does not fall in



bad company and, in case, the petitioner indulges in any unlawful act, she will inform it to the jurisdictional police station as also following the spirit of section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015 and in view of the exceptions carved out by the Hon'ble Division Bench of this Court in the case of **Lalu Kumar and Ors. Vs. The State of Bihar reported in 2019 (4) PLJR 833** that classification of the offences under the bailable and non-bailable sections would not be relevant for the purpose of grant of bail to a juvenile and the prayer for bail of a juvenile may be rejected only under one of the three conditions as under:-

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(ii) The release is likely to expose the said person to moral or physiological danger; and
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Babarganj P.S. Case No. 17 of 2021.

One of the sureties shall be the mother of the petitioner/revisionist and she will also furnish an undertaking in terms stated here-in-above.

The Probation Officer shall keep on visiting the place of the petitioner and shall submit periodical report to the Juvenile Justice Board (J.J.B.), Bhagalpur, regarding conduct of the petitioner. If found anything adverse against this petitioner/revisionist, the same will also be reported to the Board for necessary action.

(Chandra Shekhar Jha, J)

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