

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.1800 of 2023

Arising Out of PS. Case No.-846 Year-2022 Thana- KAHALGAON District- Bhagalpur

XXXX Son Of Md. Munna @ Jamal Under Guardian of Mother Afsana
Khatoon R/O Purab Tola Pandey Gali Mushahari Tola Kahalgaon, P.S.-
Kahalgaon, District- Bhagalpur

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Pankaj Kumar, Advocate

For the Respondent/s : Mrs. Anita Kumari Singh, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

4 01-12-2023 Heard learned counsel appearing on behalf of the

appellant/petitioner and learned APP appearing on behalf of the

State.

2. The present application is being preferred against
judgment dated 15.03.2023 passed by learned Additional
Sessions Judge-1 cum Special Judge (Children Court)
Bhagalpur in Special Case (Children) No. 4 of 2023 by which
the learned Court refused to enlarge the petitioner on bail in case
arising out of Kahalgaon P.S. Case No. 846 of 2022 registered
for the offence punishable under Sections 302 and 328 of the
Indian Penal Code.

3. The appellant/petitioner, aged about 16 years 06
months and 07 days on the alleged date of occurrence i.e.



27.08.2022, is named in F.I.R., and is in custody/observation home since 24.08.2022.

4. The allegation against this appellant/petitioner is to commit murder of his wife by administering poison.

5. Learned counsel appearing on behalf of the appellant/petitioner submitted that he has been falsely implicated with the present case on instance of his in-laws. It is pointed out that marriage of appellant/petitioner was performed with deceased (wife) against the will of her parents and after the marriage she could not normalize her relations with her parents and committed suicide after consuming poison. It is further submitted that from entire investigations, where charge-sheet has already been submitted, nothing appears as to suggest that the act of appellant/petitioner was so direct and active in nature, which may forced deceased as to commit suicide without leaving no other option. In support of his submissions learned counsel relied upon the legal report in the case of **Gurcharan Singh v. State of Punjab** reported in [2016 SCC 1415].

6. Learned counsel appearing on behalf of the appellant/petitioner submitted that father of the juvenile appellant/petitioner is ready to stand as a surety and furnish an undertaking that he will take care of the appellant/petitioner 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.

7. Learned APP for the State has opposes the prayer for bail and submitted that occurrence took place in the house of appellant/petitioner, who is husband of the deceased. Learned APP has, however, not pointed out any adverse material from the social investigation report.

8. Having regard to the submission and materials showing that the appellant has been adjudged juvenile aged about 16 years 06 months and 07 days approximately on the alleged date of occurrence, no active participation of the appellant/petitioner has been alleged 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 appellant/petitioner on bail, as also that appellant has remained in the Observation Home for more than one year and his father/mother is ready to stand as a surety and furnish an undertaking that if released on bail he will take care of the petitioner and shall ensure that he does not fall in bad company and, in case, the petitioner indulges in any unlawful act, he 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:-

“(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.”

9. The probation report which was called vide order dated 9.10.2023, is now available on record. On perusal of the said report it appears that child/petitioner is of good nature and is not of criminal mindset. It also appears from the report that appellant/petitioner tried to save deceased but could not succeed in his efforts. Report of his teachers are also positive. There is no criminal antecedent and furthermore he does not seem to be even of criminal mindset and having scope of improvement.

10. Accordingly, this court sets-aside the impugned



order and directs release of the appellant/petitioner 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 Additional Sessions Judge-1 cum Special Judge (Children Court) Bhagalpur/concerned Court in connection with Kahalgaon P.S. Case No. 846 of 2022.

11. One of the sureties should be the father/mother of the appellant/petitioner and he will also furnish an undertaking in terms stated here-in-above.

12. 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 appellant. If found anything adverse against this appellant/petitioner, the same will also be reported to the Board for necessary action.

(Chandra Shekhar Jha, J.)

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