

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.2384 of 2023**

Arising Out of PS. Case No.-644 Year-2022 Thana- ARA NAGAR District- Bhojpur

XX

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellant	:	Mr. Prabhat Kumar Singh, Advocate
For the Respondent	:	Mr. Syed Ashfaque Ahmad, APP
For the Informant	:	Mr. Bhaskar Shankar, Advocate

**CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT**

Date : 07-11-2023

Heard learned counsel appearing on behalf of the appellant and learned APP appearing on behalf of the State duly assisted by learned counsel appearing on behalf of the informant.

2. The present appeal is being preferred against the order dated 15.04.2023 passed by learned 1st Additional Sessions Judge, Bhojpur, Ara in Special Children Case No. 01 of 2023 by which the learned Court has refused to enlarge the appellant on bail in connection with Ara Town P.S. Case No. 644 of 2022 registered for offences punishable under Section 302 of the Indian Penal Code and Section 27 of the Arms Act.

3. The appellant, aged about 17 years 04 months and 03 days on the alleged date of occurrence i.e. 17.07.2022, is not named in F.I.R. and is in observation home since



16.08.2022.

4. The allegation against this appellant is to commit murder of the step-mother and step-brother of the informant.

5. Learned counsel appearing on behalf of the appellant submitted that appellant is not named in F.I.R. and his name surfaced on the basis of extra judicial confession made by co-accused person, namely, Goutam Kumar, who is son of the informant, where nothing incriminating surfaced during the course of investigation, which may connect the appellant with present set of occurrence. It is also submitted that during investigation, none of the witness has claimed to be eye-witness of the occurrence and all have made general and omnibus allegation against the appellant. It is also pointed out that appellant is a man of clean antecedent.

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



prayer for bail of the appellant.

8. Having regard to the submissions and materials showing that the appellant has been adjudged juvenile aged about 17 years 04 months and 03 days on the alleged date of occurrence, no active participation of the appellant has been alleged as also that appellant has remained in the Observation Home since 16.08.2022 and his father is ready to stand as a surety and furnish an undertaking that if released on bail he will take care of the appellant 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. Having regard to the submissions made by the parties and taking into consideration the material available on record, I am of the considered opinion that name of the appellant during the course of investigation on the basis of confessional statement of co-accused. Further, taking into consideration the materials on record as well as the period of incarceration of the appellant and in the best interest of CICL, this Court is of the considered view that the impugned order passed by the court below is not in consonance with the aims and objectives of the Act.

10. In the result, I am of the opinion that the learned court below has committed material irregularity in arriving at the conclusion that grant of bail to the petitioner would amount to defeating the ends of justice.

11. Accordingly, the order dated 15.04.2023 passed by learned 1st Additional Sessions Judge, Bhojpur, Ara in Special Children Case No. 01 of 2023 arising out of Ara Nagar P.S. Case No.644 of 2022 is hereby set aside.

12. The appeal is allowed.



13. Let the appellant, named-above, be released 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 1st Additional District and Sessions Judge, Bhojpur at Ara in connection with Special Children Case No. 01 of 2023 arising out of Ara Nagar P.S. Case No.644 of 2022 on the following conditions:-

(i) That one of the sureties should be the father of the appellant; and

(ii) That the father of the appellant shall file an affidavit before the learned Juvenile Justice Board, West Champaran at Bettiah giving specific undertaking that after release of the appellant on bail, he will take proper care of the appellant and will not allow him to fall into bad company.

(Chandra Shekhar Jha, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	10.11.2023
Transmission Date	10.11.2023

