

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.3067 of 2023

Arising Out of PS. Case No.-498 Year-2022 Thana- BUXAR MUFFSIL District- Buxar

At CICL “S” Under Guardian Mother Namely Kiran Devi Kiran Devi aged about 56 Wife of Subash Chaudhary @ Subash Pasi, XXXXX, resident of Village Doederwa Chausa, P.S. -Buxar Muffasil, Distt. - Buxar.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Ajay Kumar Singh, Advocate

For the Respondent/s : Mr. Anand Mohan Prasad Mehta, APP

CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL ORDER

- 4 06-11-2023 1. Heard learned counsel for the appellant and learned APP for the State.
2. The instant appeal has been filed under Section 101 (5) of Juvenile Justice (Care and Protection of Children) Act, 2015 against the order dated 26.05.2023, in Juvenile Case No. 3 of 2023, passed by learned Additional District Judge-I-Cum-Special Judge (Children Court), Buxar, arising out of Buxar Muffasil P.S. Case No. 498 of 2022, registered for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code, whereby the prayer for bail made by the appellant has been rejected.
3. The main submissions advanced by learned counsel appearing for the appellant are that the appellant has fair and

clean antecedent and he has been declared juvenile and at the time of commission of the alleged occurrence, his age was seventeen years and three months and during the investigation, mainly relying upon the confessional statement of co-accused namely, Nayan Prakash Das, the appellant has been implicated in the instant matter and the said statement carries no evidentiary value and moreover, the allegation appearing from the said confessional statement does not get corroboration from the *post-mortem* report of the deceased. Further submissions are that co-accused Dheeraj Kumar Sharma, who has also been declared juvenile and his case appears to be similar with the appellant has been granted bail by a co-ordinate Bench of this Court vide order dated 17.08.2023 passed in Criminal Appeal (SJ) No. 1744 of 2023 preferred by the said co-accused and co-accused Nayan Prakash Das has also been granted bail by a co-ordinate Bench of this Court vide order dated 03.08.2023 passed in Cr. Misc. No. 27513 of 2023. Further submission is that the appellant has been languishing in remand home since 02.11.2022 and the appellant's parents are very poor persons and their livelihood depends on labour work. The social investigation report is not against the appellant.

4. Learned APP appearing for the State has opposed

the bail prayer of the appellant.

5. Considering the above submissions and mainly the protective custody period of the appellant which has been about one year and in respect of appellant's involvement in the alleged crime, the prosecution is mainly relying upon the confessional statement of co-accused person, who is on bail and one co-accused, who has been declared juvenile, is enjoying the privilege of bail and there are several major family members in the family of the appellant and the prosecution has not brought any material to show the past criminal activity of the appellant, in my opinion, in the said circumstances, the appellant deserves to the privilege of bail. Accordingly, let the appellant named-above be released on bail on furnishing bail bond of Rs. 10,000/- (Ten Thousand) with two sureties of the like amount each to the satisfaction of the learned Additional District Judge-I-Cum-Special Judge (Children Court), Buxar, in Juvenile No. 3 of 2023, arising out of Buxar Muffasil P.S. Case No. 498 of 2022, on the following conditions:

(i) Appellant shall co-operate in the trial and shall be properly represented on each and every date fixed by the trial Court and shall remain physically present as directed by the trial Court and on his absence on two consecutive

dates without sufficient reason, his bail bond shall be cancelled by the trial Court.

(ii) If the appellant tampers with the evidence or the witnesses, in that case the prosecution will be at liberty to move for cancellation of his bail.

(iii) One of the bailors shall be mother of the appellant, who shall file her written undertaking to take care of the appellant after his release from the remand home and the learned trial Court shall call for the report about the conduct of the appellant after gap of every six month during trial from the probation officer/PS concerned, if the appellant is found to be involved in any other criminal activity subsequent to the commission of the alleged occurrence then the learned trial Court shall take serious action against him by cancelling his bail bond.

6. In the result, the instant appeal stands allowed and the order impugned in hereby set aside.

(Shailendra Singh, J)

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