

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.3243 of 2023

Arising Out of PS. Case No.-307 Year-2020 Thana- AHYAPUR District- Muzaffarpur

ABHISHEK KUMAR @ PARGATI Son of Shivchandra Ray @ Shivchandra Prasad Under the guardianship of his mother namely Rupkala Devi, Residing of Ward No. 4, Village-Sugridih, P.S.-Mohindwara, District-Sitamarhi.

... .. Appellant/s

Versus

The State of Bihar.

... .. Respondent/s

Appearance :

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

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

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

4 21-12-2023 Heard learned counsel appearing on behalf of the juvenile/appellant and learned APP appearing on behalf of the State.

2. The present revision application is being preferred against order dated 24.05.2023 passed by learned Additional District and Sessions Judge Ist, Muzaffarpur in Trial No. 01/2023 arising out of Ahiyapur P.S. Case No. 307/2020 registered for offence under Sections 363 and 365 of the Indian Penal Code later on converted into Sections 364, 302, 201, 120(B) of the Indian Penal Code.

3. The appellant/CICL (Children in conflict with law), aged about 17 years 09 months and 20 days on the alleged date of occurrence i.e. 09.03.2020, is not named in F.I.R., and is in



custody/observation home since 28.08.2020.

4. The crux of the allegation against accused/appellant is to commit murder of missing son of the informant alongwith other co-accused persons. Accused/appellant declared juvenile vide order dated 18.10.2022, where his age was declared on the date of occurrence is 17 years, 09 months and 20 days by J.J.B., Muzaffarpur.

5. Learned counsel appearing on behalf of the applicant/accused submitted that his name surfaced in present case out of self confession as made in Ahiyapur P.S. Case No. 564/2020 in furtherance of which, no incriminating material recovered/surfaced as to connect applicant/accused, *prima facie* with the present occurrence of murder. It is submitted that earlier the bail petition of applicant/accused was filed before this Court which was rejected by one of the learned co-ordinate Bench of this Court through Cr. Misc. No. 46787 of 2021 dated 08.03.2022 but, thereafter, vide order dated 18.10.2022 of J.J.B. Muzaffarpur, the accused/appellant was declared juvenile and for said reason, the present criminal appeal is now filed. The applicant/accused also involved in two more criminal cases, where he is on bail. Learned counsel also submitted that nothing appears from the social investigation report of



applicant/accused, which may suggest that appellant cannot reform in future, as to join the mainstream of the society. While concluding the argument, it is submitted that investigation of this case is completed, for which charge-sheet has been submitted, as such, there is no chance of tampering with the evidence and with almost no reason, juvenile is in custody since more than three years.

6. Learned counsel appearing on behalf of the accused/appellant submitted that mother of the juvenile appellant is ready to stand as a surety and furnish an undertaking that she will take care of the appellant 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 while opposing the prayer of bail submitted that applicant/accused is having of criminal antecedents and in active participation in alleged occurrence cannot be denied.

8. Having regard to the submission and materials showing that the juvenile/appellant has been adjudged juvenile, aged about 17 years 09 months and 20 days approximately on the alleged date of occurrence, where the social investigation



report of the appellant is not showing any adverse material against him so as to dissuade this court for granting release of the juvenile/appellant on bail, as also that appellant has remained in the Observation Home for more than three years 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 appellant/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:-

“(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. From the perusal of Social Investigation Report of applicant/CICL, it nowhere appears that he cannot reform himself as to join the mainstream of the society. It also appears that applicant/CICL requires to start his study and may also given some professional trading.

10. In view of aforesaid facts and circumstances and by taking note of fact that applicant/accused adjudged as juvenile on the date of occurrence, where his age was declared as 17 years 09 months and 20 days and moreover, save and except confession, no incriminating material appears during course of investigation, as to connect him, *prima facie*, with present occurrence of murder, accordingly, this court sets-aside the impugned order and directs release of the juvenile/appellant 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 District and Sessions Judge Ist, Muzaffarpur in Trial No. 01/2023 arising out of Ahiyapur P.S. Case No. 307/2020.

11. One of the sureties should be the mother of the applicant/accused and she will also furnish an undertaking in terms stated here-in-above.

12. The Probation Officer shall keep on visiting the



place of the appellant and shall submit periodical report to the Juvenile Justice Board (J.J.B.), Muzaffarpur, regarding conduct of the applicant/accused. If found anything adverse against this appellant/accused, the same will also be reported to the Board for necessary action.

(Chandra Shekhar Jha, J)

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