

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.3122 of 2022

Arising Out of PS. Case No.-92 Year-2021 Thana- DHOLBAJJA District- Bhagalpur

XXX S/o Rajesh Kumar Resident of Khairpur Bazar, P.S.- Dholbajja (Kadwa), District- Bhagalpur. Through natural guardian sri Rajesh kumar, Father of appellant S/o Janardhan Jaiswal, Resident of village Khairpur, P.S.- Dholbajja (Kadwa) District- Bhagalpur.

.. ... Appellant/s

Versus

THE STATE OF BIHAR Bihar

... ... Respondent/s

Appearance :

For the Appellant/s : Mr.Praveen Kumar
For the Respondent/s : Mr.A.G.

CORAM: HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
ORAL ORDER

7 31-07-2023 Heard learned counsel for the appellant and learned
APP for the State.

2. The present appeal has been filed against the order dated 23.08.2022 passed by learned Additional Sessions Judge-I-cum-Special Judge (Children Court), Bhagalpur in connection with Special Case (Children) No. 12 of 2022 arising out of Dholbazz(Kadwa) P.S. Case No. 92 of 2021 registered under Sections 302, 201 and 34 of the IPC whereby and whereunder the prayer for bail of the appellant was rejected.

3. As per prosecution case, informant saw his brother alongwith all FIR named accused persons including appellant(juvenile) near milan Chowk. It is further stated that all the FIR named accused persons including appellant(juvenile) and informant's brother were under intoxicated condition. It is



further stated that all FIR named accused including the appellant(juvenile) after feeding the informant's brother took him to a lonely place and concertedly committed murder of the informant's brother and thereafter they concealed the dead body. It is further stated that on 26.12.2021, the appellant(juvenile) came at the house of the informant to ask about his brother Nunku Ram(deceased) and after that appellant(juvenile) fled away by motorcycle.

4. Learned counsel for the appellant submits that allegation of last seen is against the appellant(juvenile) and the same is not believable as there is wider time gap between the taking away of the deceased and recovery of dead body. He further submits that social investigation report suggests that the appellant had friendship with the deceased, while deceased was a person of criminal nature. Learned counsel for the appellant(juvenile) further submits that according to para 3 of the memo of appeal the appellant bears no criminal antecedent, meaning thereby the appellant is not associated with any known criminal organization. He further submits that appellant is in judicial custody since 01.02.2022. Learned counsel for the appellant (juvenile) submits that father of the appellant (juvenile) undertakes that he will not expose him to the moral or



psychological danger and take care of the appellant(juvenile) and will not allow him to be in association with any known criminal.

5.Learned A.P.P for the State vehemently opposes the prayer of bail of the appellant.

6. As per statue, the bail application of a child in conflict with law is not to be considered on the merit of the case or nature of allegation or gravity of the offence, rather in terms of Section 12 of the Juvenile Justice (Care and Protection of Children) Act,2015.

7. In view of aforesaid facts and circumstances, position of law as stated above, the argument advanced on behalf of both sides, undertaking given by the father of the appellant that he will take proper care of the appellant and will not allow him to go in the company of bad elements and the material available on record, impugned order dated 23.08.2022 is hereby set aside and the appeal is allowed.

8. Accordingly, the above-named appellant is directed to be enlarged on bail on furnishing bail bond of Rs. 10,000/- (rupees ten thousand) with two sureties of the like amount each to the satisfaction of learned Additional Sessions Judge-I-cum-Special Judge (Children Court), Bhagalpur in connection with



Special Case (Children) No. 12 of 2022 arising out of Dholbazza(Kadwa) P.S. Case No. 92 of 2021 , subject to condition that one of the bailors will be father of the appellant who will file an affidavit giving an undertaking to the effect that he will take proper care of good behaviour and child's (appellant's) well being and will not allow him to go in the company of bad elements.

9. Accordingly, the instant appeal stands disposed of.

(Alok Kumar Pandey, J)

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