

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.3692 of 2023**

Arising Out of PS. Case No.-481 Year-2021 Thana- KANTI District- Muzaffarpur

X-1

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellant	:	Mr. Ajay Kumar Thakur, Advocate Mrs. Vaishnavi Singh, Advocate
For the Respondent-State:		Mr. Anand Mohan Prasad Mehta, APP
For the Informant	:	Mr. Abhay Kumar, Advocate Mr. C.S. Sharma, Advocate

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

Date : 08-12-2023

Heard learned counsel appearing on behalf of the appellant, learned APP for the State and learned counsel for the informant.

2. The present appeal is being preferred against the order dated 04.07.2023 passed by learned 1st Additional Sessions Judge-cum-Special Judge, Children Court, Muzaffarpur in Special Child Case No.7 of 2023 arising out of Kanti P.S. Case No.481 of 2021 by which the learned Court has refused to enlarge the appellant on bail.

3. The juvenile-appellant is named in first information report and in custody since 29.03.2023.

4. Allegation against the appellant is to commit murder of the son of informant along with other named co-



accused persons out of previous enmity.

5. The age of the appellant was determined by Juvenile Justice Board, Muzaffarpur on the date of occurrence as 17 years four months and 22 days.

6. Learned counsel for the appellant-juvenile submitted that the allegation as appears from the narration of FIR is very much general and omnibus against the appellant. It is pointed out that the father of appellant was made accused in this case also and as to rope entire family, this juvenile was also made accused. It is further submitted that other co-accused persons, namely, Ram Samejan Pandey @ Samejan Pandey, who is grand father of juvenile was granted anticipatory bail by this Court, whereas the father of juvenile, namely, Munna Thakur has been granted regular bail through Cr. Misc. No.61653 of 2022 vide order dated 10.02.2023. It is also submitted that appellant is a man of clean antecedent and is a student. While concluding argument, learned counsel submitted that investigation of this case is completed for which charge-sheet has already submitted and, as such, there is no chance of tampering with the evidence.

7. On the other hand, learned APP for the State duly assisted by learned counsel for the informant submits that



it was juvenile-appellant who carried deceased upto Prashant Hospital, Muzaffarpur after brutal assault, which caused death.

8. From perusal of the record, it appears that appellant has remained in observation home since 29.03.2023.

9. The Division Bench of this Court in the case of **Lalu Kumar and Ors. Vs. The State of Bihar** reported in **2019 (4) PLJR 833**, while interpreting Section 12 of the Act, has laid down the principle that the Board while considering the bail of a juvenile is duty bound to follow the principle of 'best interest', 'repatriation' and 'restoration' of child. The gravity and nature of offence are immaterial for consideration of bail of a juvenile. As per Section 12 of the Act of 2015, an application for bail is not decided by reference to classification of offences as bailable or non-bailable under the Code of Criminal Procedure.

10. The social investigation report of juvenile-appellant is also made available to this Court in terms of order dated 09.10.2023. On perusal of said probation report, it appears that occurrence took place out of enmity. It also suggest that juvenile is a student and he is of friendly nature. The report further suggest that appellant was staying at Madhepura with his mother and he passed his matriculation examination with 1st division. Nothing appears from the said report, which may



suggest that appellant cannot be reformed to join the main stream of society.

11. Having regard to the submissions made by the parties and taking into consideration the material on record, I am of the considered opinion that the allegation against the appellant-juvenile is general and omnibus and other co-accused persons, who are grand father and father of the appellant have already granted bail by this Court. Further, taking into consideration the materials on record 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 sustainable in the eyes of law inasmuch as the same is not in consonance with the aims and objectives of the Act.

12. In the result, I am of the opinion that the learned court below has committed material irregularity in arriving at the conclusion that release of petitioner child in conflict with law may expose him to moral or psychological danger.

13. Accordingly, the order dated 04.07.2023 passed by learned 1st Additional Sessions Judge-cum-Special Judge, Children Court, Muzaffarpur in Special Child Case No.7 of 2023 arising out of Kanti P.S. Case No.481 of 2021 is hereby



set aside.

14. The appeal is allowed.

15. Let the appellant 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 learned learned 1st Additional Sessions Judge-cum-Special Judge, Children Court, Muzaffarpur in Special Child Case No.7 of 2023 arising out of Kanti P.S. Case No.481 of 2021 on the following conditions:-

(i) that one of the bailors shall be the mother of the appellant.

(ii) that the mother of the appellant shall file an affidavit before the learned Juvenile Justice Board, Muzaffarpur giving specific undertaking that after release of the appellant on bail, she 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	09.12.2023
Transmission Date	09.12.2023

