

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.4012 of 2022

Arising Out of PS. Case No.-209 Year-2021 Thana- HARSIDHI District- East Champaran

ATISH KUMAR @ ATISH KUMAR GUPTA Son of Sambhulal Sah @ Sambhu Prasad Resident of Village- Harsidhi Bazar (Harsidhi), P.S.- Harsidhi, District- East Champaran, under the guardianship of his father, namely Sambhulal Sah @ Sambhu Prasad S/ O Ramprit Sah

... .. Appellant/s

Versus

The State of Bihar Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Ajay Kumar Singh
For the Respondent/s : Mr.Syed Ashfaque Ahmad

CORAM: HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
ORAL ORDER

6 05-05-2023 Heard learned counsel for the appellant and learned APP for the State.

The present appeal has been filed against the order dated 14.10.2022 passed by learned Additional Sessions Judge- 1st cum Special Judge, Children's Court, East Champaran at Motihari arising out of Harsidhi P.S. Case No. 209 of 2021, Children Trial No. 19 of 2022 registered under Sections 302 and 120B/34 of Indian Penal Code, whereby and whereunder the prayer for bail of the appellant was rejected.

As per prosecution case, the informant has narrated that on 03.06.2021 his son has been called by unknown persons and after departure he did not return. It has been further stated by the informant that he called Manish Kumar, who informed



that his son will come back after some time and thereafter, Manish Kumar switched off his mobile. It is further stated that Manish Kumar prior made a conference call to his son for the purpose of making conversation with his friends namely Bhim Kumar, Pappu Kumar and Rupesh Kumar who had threatened to murder his son. It has been further stated by the informant that on 01.06.2021 co-convict Deepak Kumar and Atish Kumar (appellant) assaulted informant's son in the market and lastly on 05.06.2021 informant got information through whatsapp that his son was murdered by slitting his neck.

Learned counsel for the appellant(juvenile) 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 entire allegation in the FIR is on the basis of suspicion. There is no cogent evidence to implicate the present appellant(juvenile) in the present case. He further submits that there is no eye witness to the alleged occurrence. He further submits that appellant is in judicial custody since 27.09.2021. He further submits that vide order dated 01.06.2022, the learned Juvenile Justice Board declared the appellant as a child in conflict with law (juvenile) and assessed his age 16 years, 3



months and 6 days. Learned counsel for the appellant (juvenile) submits that father of the appellant (juvenile) undertakes that he will take the responsibility of the appellant.

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

As per statute, 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.

In view of aforesaid facts and circumstances as well as position of law as stated above, impugned order dated 14.10.2022 is hereby set aside and the appeal is allowed.

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-1st cum Special Judge, Children's Court, East Champaran, Motihari in connection with Harsidhi P.S. Case No. 209 of 2021, Children Trial No. 19 of 2022, 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.

Accordingly, the instant appeal stands disposed of.

(Alok Kumar Pandey, J)

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