

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.4226 of 2022**

Arising Out of PS. Case No.-88 Year-2022 Thana- ITARHI District- Buxar

XX

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Sanjay Kumar, Adv.
For the Respondent/s : Mr. Sadanand Paswan, Spl. P.P.

**CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT**

Date : 10-08-2023

Heard Mr. Sanjay Kumar, learned counsel for the appellant and Mr. Sadanand Paswan, learned Special Public Prosecutor for the State.

2. Though, the appellant has given full description in the appeal, it would be inappropriate to disclose his identity in view of the statutory provisions prescribed under Section 74 of the Juvenile Justice (Care and Protection of Children) Act, 2015. He is being referred to in the cause title as “XX”.

3. Registry while uploading the order on the website shall also ensure that the cause title is reflected in similar manner

4. The appellant has filed the present appeal under



Section 101(5) of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short 'The Act, 2015') challenging the order dated 20.10.2022 passed by the learned Additional District and Sessions Judge-I-cum-Special Judge (SC/ST & Children Court), Buxar in Child Case No. 16 of 2022 arising out of Itarhi P.S. Case No. 88 of 2022 dated 21.03.2022 registered under Sections 302/34 of the Indian Penal Code and Section 3(2)(v) of the Scheduled Castes and Scheduled Tribe (Prevention of Atrocities) Act, 1989 whereby the application for bail of the appellant, who is in custody since 19.04.2022 was rejected.

5. The prosecution case, in brief, is that on 19.03.2022, while the informant was returning from Barkagaon village, his motorcycle touched the hand of one Buddu Kumar, upon which an altercation took place but he pacified the matter. Later on, when the informant came to know about the fight between the accused persons and his brother, he rushed there and found that the accused persons including the appellant are assaulting his brother and they slated him by taking caste name and lastly drowned him to death in the pond.

6. During the course of investigation, the appellant claimed himself to be a juvenile and after separating his case,



the same was sent before the Juvenile Justice Board, Buxar on 07.07.2022.

7. Upon examination of testimonial produced by the appellant and the medical report, the Juvenile Justice Board, Buxar determined the age of the appellant as 17 years 6 months and 26 days on 19.03.2022, the date on which occurrence had taken place. Accordingly, vide order dated 08.09.2022 passed by the Juvenile Justice Board, Buxar, the appellant was declared juvenile in conflict with law.

8. Subsequently, the Juvenile Justice Board, Buxar conducted preliminary assessment to assess the appellant's mental and physical ability to understand the consequences of the offence and the circumstances in which he had allegedly committed the offence.

9. After preliminary assessment made under Section 15 of the Act of 2015, the Juvenile Justice Board, Buxar determined that since the appellant had committed a heinous offence and he is above the age of 16 years but below the age of 18 years, his trial was fit to be transferred to the Children's Court. Accordingly, the Board transferred the entire record of the case to the court of Special Judge (POCSO), Buxar for trial of the appellant as an adult.



10. Learned counsel for the appellant by assailing the impugned order submits that the ground for rejection as has been shown in the impugned order is only that the appellant is found to be addicted with smoking and living in a bad company. Vide order dated 05.05.2023, a xerox copy of the case diary, social background report as well as social investigation report was called for from the court below. A perusal of the same, it would appear that there is no adverse remark against the appellant, inasmuch as he has been incarcerated for a period of about one year and four months.

11. On the other hand, learned Special Public Prosecutor for the State vehemently opposes the prayer for bail of the appellant and submits that there is clear finding of the learned Special Judge that there is a chance that the release of the appellant would likely to bring him into association with other known criminals or expose him to moral, physical and psychological danger and would defeat the ends of justice.

12. Having heard the learned counsel for the parties and taking note of the social investigation report as well as the social background report, this Court finds that there is no adverse remark against the appellant and further the presumption of innocence of the child cannot be ruled out, that



apart the best interest repatriation and restoration of child must be taken care of.

13. Further, a Division Bench of this Court in **Lalu Kumar & Ors. vs. The State of Bihar & Ors.[2019(4) PLJR 833]**, has held that seriousness and gravity of the offence alleged cannot be made a ground for rejecting bail under the Act of 2015.

14. Accordingly, the impugned order dated 20.10.2022 passed in Child Case No. 16 of 2022 by the learned Additional District and Sessions Judge-I-cum-Special Judge (SC/ST & Children Court), Buxar in Itarhi P.S. Case No. 88 of 2022, is set aside.

15. The appellant is directed to 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 Additional District and Sessions Judge-I-cum-Special Judge (SC/ST & Children Court), Buxar in Itarhi P.S. Case No. 88 of 2022, subject to the condition that one of the bailors will be father/mother 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.



16. The appeal stands allowed.

rohit/- **(Harish Kumar, J)**

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	11-08-2023
Transmission Date	11-08-2023

