

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.4392 of 2022

Arising Out of PS. Case No.-384 Year-2022 Thana- BIHAR District- Nalanda

X-1

... .. Appellant/s

Versus

1. The State of Bihar
2. Vijay Kumar Son of Rudal Paswan Resident of Village - Barandi, P.S.-
Rahui, District - Nalanda.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Rajnish Kumar, Advocate
For the State	:	Ms. Usha Kumari 1, APP
For the Informant	:	Mr. Mithilesh Prasad Sharma, Adv.

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

Date : 10-08-2023

Heard Mr. Rajnish Kumar, learned counsel appearing on behalf of the appellant and Mr. Mithilesh Prasad Sharma, learned counsel for the informant. The State is represented by Ms. Usha Kumari 1, learned Additional Public Prosecutor.

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 “X-1”.

3. Registry while uploading the order on the website



shall also ensure that the cause title is reflected in similar manner

4. The present appeal has been preferred on behalf of the appellant under Section 101(5) of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short 'The Act, 2015') challenging the order dated 03.11.2022 passed by the learned 1st Additional Sessions Judge-cum-Special Judge, Children Court, Bihar Sharif, Nalanda in Children Case No. 12 of 2022, arising out of Bihar P.S. Case No. 384 of 2022 for the offences punishable under Sections 302, 376(D), 120(B)/34 of the Indian Penal Code; Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Section 6 of the POCSO Act whereby the learned children court has rejected the prayer for grant of bail of the appellant.

5. The prosecution case is based on the written report of the informant alleging therein that on 26.05.2022 at about 6:30 his minor daughter had gone to attend the computer class, in the meanwhile, at about 11:30 he received a mobile call from the mobile of his daughter where one boy told him that his daughter is admitted in Sadar Hospital, Bihar Sharif. On the aforesaid information, the informant rushed to the Sadar Hospital, Bihar Sharif where he found the dead body of her



daughter. He also found that his daughter was done to death by throttling. The staff of the Hospital disclosed that his daughter was brought by 2-3 boys in a Toto.

6. During the course of investigation, the appellant claimed himself to be a juvenile and his case was duly considered by the Juvenile Justice Board and on the basis of the medical report he has been declared juvenile *vide* order dated 22.07.2022, copy of which has been brought on record by way of filing the supplementary affidavit.

7. While assailing the impugned order, learned counsel for the appellant submits that the FIR has been instituted against unknown persons, however, during the course of investigation, the appellant was apprehended by the police and on the basis of CDR and tower location, it has been found that the appellant was in constant touch with the deceased and soon before her death, he was present near the place of occurrence. Learned counsel further submits that the confessional statement of the appellant was also recorded leading to recovery of slipper of the deceased and clothes which is said to have been used for throttling. It has also found that the mobile number which was used by the appellant was in the name of his father and till date the same has not been



recovered. He lastly submits that be that as it may, the confessional statement of the appellant before the police is not at all admissible and the same is hit by Sections 25/26 of the Indian Evidence Act. He also submits that so far the recovery of slipper and clothes are concerned, the same does not show the complicity of the appellant in the present crime.

8. On the other hand, learned counsel for the State and learned counsel for the informant vehemently opposed the prayer for bail of the appellant and submit that though the appellant has been declared juvenile but the manner in which the crime in question has been committed, this shows that the appellant is a person of matured mind who had committed the crime with the help of his friends in such a heinous manner. They also submit that on the basis of the confession of the appellant the clothe/rope has been recovered by which the deceased was subjected to strangulation and the same is also corroborated by the postmortem report.

9. This Court *vide* order dated 05.05.2023 had called for the up-to-date social investigation report as well as social background report. From perusal thereof, it appears that there is no adverse remarks against the appellant and his behaviour is found to be at par with a disciplined boy. Further, the status



report of the trial also suggests that out of 14 witnesses, till date only three witnesses have been examined and there is no likelihood of conclusion of the trial in near future. This Court also cannot lose sight of the principles of presumption of innocence of a child and the paramount importance of his best interest, repatriation and restoration.

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

11. Considering the aforementioned submissions made on behalf of the parties and taking note of the social investigation report/social background report which suggests no adverse remarks and the appellant having been declared juvenile is in custody for over a period of one year and two months, the impugned order dated 03.11.2022 passed by the learned 1st Additional Sessions Judge-cum-Special Judge, Children Court, Bihar Sharif, Nalanda in Children Case No. 12 of 2022, arising out of Bihar P.S. Case No. 384 of 2022, is set aside and 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 1st Additional Sessions Judge-cum-Special Judge, Children Court, Biharsharif, Nalanda in connection with Children Case No. 12 of 2022, arising out of Bihar P.S. Case No. 384 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.

12. The appeal stands allowed in the aforementioned terms.

(Harish Kumar, J)

Anjani/-

AFR/NAFR	N.A.
CAV DATE	N.A.
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