

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.5348 of 2023

Arising Out of PS. Case No.-809 Year-2022 Thana- KAHALGAON District- Bhagalpur

Kajal Kumari @ Kajal Devi Wife Of Kishor Mandal R/O Village- Shahpur
Parmanandpur Khawas, P.S.- Gogha, Dist.- Bhagalpur

... .. Appellant/s

Versus

The State of Bihar Patna

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Ravindra Kumar, Advocate

For the Respondent/s : Mr. Syed Ashfaque Ahmad, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

2 19-12-2023 Heard learned counsel appearing on behalf of the

appellant/petitioner and learned APP appearing on behalf of the

State.

2. The present application is being preferred against
judgment dated 13.10.2023 passed by learned Additional
Sessions Judge-1 cum Special Judge (Children Court)
Bhagalpur in Special Case (Children) No. 28 of 2023 by which
the learned Court refused to enlarge the petitioner on bail in case
arising out of Kahalgaon (Ghogha) P.S. Case No. 809 of 2022
registered for the offence punishable under Sections 363, 365,
34 of the Indian Penal Code, whereby Sections 302 and 201 of
the Indian Penal Code were added subsequently.

3. The appellant/petitioner, aged about 17 years 05



months and 09 days on the alleged date of occurrence i.e. 12.08.2022, is named in F.I.R., and is in custody/observation home since 13.09.2022.

4. The allegation against this appellant/petitioner is to kidnap son of informant alongwith Govind Kumar (neighbour) with the help of other co-accused persons, where dead body of son of informant was recovered subsequently from the bank of Ganga River.

5. Learned counsel appearing on behalf of the appellant/petitioner submitted that maximum allegation what appears against appellant/petitioner is to call son of informant over telephone. It is submitted that as per version of F.I.R. his son left his house on his own alongwith one neighbour, namely Govind Kumar, whereafter 6-7 days later dead body of the son of informant was recovered from the banks of Ganga River. It is further submitted that mobile phone in issue is registered in the name of father of the appellant/petitioner. It is submitted that appellant/petitioner is a married lady and merely on the date of occurrence she was in her paternal village, she was implicated with present case alongwith, her husband, namely Kishore Mandal, who has already granted bail by one of the Co-ordinate Bench of this Court through Cr. Misc. No. 24920 of 2023 vide



order dated 01.09.2023. It is further submitted that nothing incriminating surfaced during the course of investigation except recovery of Aadhar Card of the deceased from the house of father of appellant/petitioner, who is also co-accused person as to connect her, *prima facie*, with present occurrence.

6. Learned counsel appearing on behalf of the appellant/petitioner submitted that mother of the juvenile appellant/petitioner is ready to stand as a surety and furnish an undertaking that she will take care of the appellant/petitioner will ensure further that she would not fall in bad company and would take all possible care to connect him with the mainstream of the society.

7. Learned APP for the State while opposing the prayer for bail submitted that appellant/petitioner is named in the F.I.R. and there is specific allegation against her as to call son of the informant.

8. Having regard to the submission and materials showing that the appellant has been adjudged juvenile aged about 17 years 05 months and 09 days approximately on the alleged date of occurrence, no active participation of the appellant/petitioner has been alleged and the social investigation report of the petitioner as available through impugned order,



itself is not showing any adverse material against her, so as to dissuade this court for granting release of the appellant/petitioner on bail, as also that appellant has remained in the Observation Home for more than one year and her mother is ready to stand as a surety and furnish an undertaking that if released on bail she will take care of the petitioner and shall ensure that she does not fall in bad company and, in case, the petitioner indulges in any unlawful act, she will inform it to the jurisdictional police station as also following the spirit of section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015 and in view of the exceptions carved out by the Hon'ble Division Bench of this Court in the case of **Lalu Kumar and Ors. Vs. The State of Bihar reported in 2019 (4) PLJR 833** that classification of the offences under the bailable and non-bailable sections would not be relevant for the purpose of grant of bail to a juvenile and the prayer for bail of a juvenile may be rejected only under one of the three conditions as under:-

“(i) The release is likely to bring that person into association with any known criminal;

(ii) The release is likely to expose the said person to moral or physiological danger; and

(iii) The release would defeat the ends of justice.”



9. The social investigation report which appears discussed in the impugned order, nowhere suggests that the mother of appellant/petitioner is having of any criminal background. It nowhere, appears that appellant/petitioner could not join the mainstream of society.

10. In view of aforesaid facts and circumstances as save and except allegation of calling through mobile phone nothing incriminating appears as to connect appellant/petitioner, *prima facie*, with the present occurrence of kidnapping/murder. Accordingly, this court sets-aside the impugned order and directs release of the appellant/petitioner on bail on furnishing bail bond of Rs. 10,000/- (Rupees Ten Thousand only) with two sureties of the like amount each to the satisfaction of learned Additional Sessions Judge-1 cum Special Judge (Children Court) Bhagalpur/concerned Court in connection with Kahalgaon (Ghogha) P.S. Case No. 809 of 2022.

11. One of the sureties should be the mother of the appellant/petitioner and she will also furnish an undertaking in terms stated here-in-above.

12. The Probation Officer shall keep on visiting the place of the petitioner and shall submit periodical report to the Juvenile Justice Board (J.J.B.), Bhagalpur, regarding conduct of



the appellant. If found anything adverse against this appellant/petitioner, the same will also be reported to the Board for necessary action.

(Chandra Shekhar Jha, J.)

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