

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.2873 of 2024

Arising Out of PS. Case No.-427 Year-2023 Thana- KATIHAR NAGAR District- Katihar

XX, Male, aged about 17 years, S/O Md. Musarraf, R/O Kadwa Rampura,
P.S.-Katihar, Distt-Katihar.

... .. Appellant

Versus

1. The State of Bihar.
2. Nikita Kumari, (F), aged about 25 years, W/O Mr. Prahlad Paswan, R/V-
Baigana, Ward No.-24, P.S.-Nagar, Dist-Katihar.

... .. Respondents

Appearance :

For the Appellant	:	Mr. Arun Mandal, Advocate
For the Respondent No. 2:		M/S. Binod Kumar Sinha and Ajay Kumar Prasad, Advocates
For the State	:	Mr. Binay Krishna, Spl. P.P.

**CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH
SINGH**

ORAL ORDER

5 13-11-2024 Heard learned counsel for the appellant, learned
counsel for the respondent no. 2 and learned Spl.P.P. for the
State.

2. Though, the appellant has given full description in
the application, 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. This Criminal Appeal has been preferred by the appellant against the order dated 09.05.2024, passed by learned Additional Sessions Judge-I-cum-Special Judge, SC/ST-cum-Children Court, Katihar, in G.R. No. 3382 of 2023, corresponding to Katihar Nagar P.S. Case No. 427 of 2023, whereby and whereunder the learned court below has rejected the prayer for regular bail of the appellant, registered for the offences punishable under Sections 147, 148, 149, 341, 323, 307, 504, 506, 302 of the I.P.C. and Sections 3(1)(r)(s),3(2)(va) of the SC/ST (POA) Act, 1989.

5. As per the prosecution case, on 09.06.2023 at about 10.45 A.M., in the night, the informant's husband, Prahlad Paswan alongwith his friend Aayush Kumar had gone to see the work of flower decoration by motorcycle and after some time at about 11.35 A.M., Aayush Kumar came to the informant's house and stated that he and Prahlad Paswan was going and as soon as when they reached at Rampara, the co-accused Md. Sahazada, Md. Sahil, Md. Izhar, Md. Barik, Md. Dilkhush and the son of Minnat were standing on the road and talking to each other and on the matter of blowing horn, they abused them and on protest, they started assaulting to Prahlad Paswan with iron rod and bamboo and abused by calling his caste name, on



information, the informant and her family members alongwith Aayush Kumar rushed on the spot and saw that Md. Shahzada having blood stained iron rod, Md. Shoib and Md. Sahil having blood stained bamboo, Md. Izhar having blood stained iron rod and Md. Barik, Md. Dilkhush and Md. Minnat were fleeing towards Rampada Mitter Mohalla from the spot and her husband was lying blooded in unconscious condition and thereafter he was sent for his treatment at Sadar Hospital, Katihar and thereafter he was referred to Katihar Medical College, Katihar, where her husband was admitted in I.C.U.

6. Learned counsel for the appellant submits that the appellant has falsely been implicated in the present case. The appellant is not named in the F.I.R. The name of the appellant has surfaced in the present case merely on the basis of the confessional statement of the co-accused Md. Izhar before the police which has got no evidentiary value in the eye of law. The informant is not an eye witness to the alleged offence. Except for this, there is no other substantive evidence to suggest the implication of the appellant in the present case. The appellant was also not seen in the CCTV footage. He has passed Class-VIII examination from Urdu Middle School, Kadwa, Rampada, Katihar, and to that effect a certificate has been issued by the



Head Master of the said school. He has no concern with the alleged offence. Nothing incriminating article has been recovered from his possession. It is further submitted that other co-accused person, namely, Md. Ijhar @ Izhar, has already been granted bail by the then Co-ordinate Bench of this Court vide Cr. Appeal (SJ) No. 3493 of 2023 under order dated 09.11.2023. The appellant has clean antecedent as stated in paragraph no. 3 of the memo of appeal. There is no allegation of tampering with the witnesses alleged against the appellant. Learned counsel for the appellant has submitted that the mother of the appellant is ready to furnish an undertaking that while on bail he will not allow the appellant to associate with criminals or anti-social elements. It has further been submitted that the court below has not appreciated the Social Investigation Report in its right perspective and passed the impugned order in a cursory manner without considering the position of law and has declined bail to the appellant. No member of public was present at the relevant point of time of alleged incident. Hence, no offence under the SC/ST Act is made out against the appellant. It is further submitted that the appellant is in Remand Home/Observation Home since 13.09.2023.

7. Learned Spl.P.P. for the State and learned counsel



for the respondent no. 2 have vehemently opposed the prayer for bail of the appellant. It has further been pointed out that the release of the appellant would defeat the ends of justice. Learned counsel for the respondent no. 2 has further submitted that the trial is going on.

8. As per 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.

9. Further, a Division Bench of this Court in ***Lalu Kumar and Ors. Vs. State of Bihar [(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.

10. The law requires that reasonable grounds should be there for believing that in the event of grant of bail, the appellant would go into association of any 'known criminal' or exposed to moral, physical and psychological danger or the release of the person would defeat the ends of justice. There is no reference of any known criminal nor there is any other substantive material for the conclusion as recorded by the court below.

11. Hence, the impugned order suffers from failure



to exercise jurisdiction vested in law, is result of error apparent on the face of the record and non-consideration of provisions of law. In the absence of any material or evidence of reasonable grounds, it cannot be said that his release would defeat the ends of justice and having failed to give reasons on three contingencies for declining the bail to the appellant. Accordingly, the order dated 09.05.2024, passed by learned Additional Sessions Judge-I-cum-Special Judge, SC/ST-cum-Children Court, Katihar, in connection with G.R. No. 3382 of 2023, arising out of Katihar P.S. Case No. 427 of 2023 is set aside and the present criminal appeal is allowed.

12. Let the appellant above named, be released in favour of his mother on execution of bail bond of Rs. 20,000/- (Rupees Twenty Thousand), with two sureties of the like amount each to the satisfaction of learned Additional Sessions Judge-I-cum-Special Judge, SC/ST-cum-Children Court, Katihar in connection with G.R. No. 3382 of 2023, arising out of Katihar P.S. Case No. 427 of 2023, subject to the following conditions:-

- (i) Natural guardian/mother will furnish an undertaking that upon release on bail the appellant will not be permitted to go into contact or association with any known



criminal or allowed to be exposed to any moral, physical, or psychological danger and further that the mother will ensure that the juvenile will not repeat the offence.

(ii) Natural guardian/mother will further furnish an undertaking to the effect that the juvenile will pursue his study at the appropriate level which he would be encouraged to do besides other constructive activities and not be allowed to waste his time in unproductive and excessive recreational pursuits.

(iii) The appellant will be produced as and when required by the learned court below.

(Chandra Prakash Singh, J)

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