

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.3349 of 2023**

Arising Out of PS. Case No.-143 Year-2020 Thana- SINGHWARA District- Darbhanga

GT

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellant/s : Mr. Nilendu Kumar Choudhary, Advocate

For the Respondent/s : Mr. Bal Mukund Prasad Sinha

**CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT**

Date : 18-01-2024

Heard learned counsel appearing on behalf of the appellant and learned APP appearing on behalf of the State.

2. The present appeal is being preferred against the order dated 21.12.2022 passed by learned 1st Additional Sessions Judge-cum-Children Court, Darbhanga in P.C. Case No. 6 of 2022 arising out of Singhwara P.S. Case No.143 of 2020 by which the learned Court has refused to enlarge the appellant/CICL on bail in a case registered for offences punishable under Section 302 of the Indian Penal Code.

3. The Child in conflict with law (for short 'CICL')/appellant, aged about 17 years 06 months on the alleged date of occurrence, is not named in F.I.R. and is in observation home since 21.12.2021.

4. The allegation against the CICL/appellant is to



commit murder of husband of the informant along with other co-accused persons out of previous dispute regarding illegal trade of illicit liquor.

5. It is submitted that the eye-witness, namely, Ganour Sahni clearly stated during the course of investigation that it was co-accused Balkrishna Bhardwaj @ Balaji, who caused fatal firing upon the husband of the informant, namely, Sonu by negating any overt act against CICL/appellant. It is pointed out that said co-accused Balkrishna Bhardwaj @ Balaji has already been granted bail by one of the learned co-ordinate Bench of this Court vide order dated 10.05.2023 passed in Cr. Misc. No.31629 of 2023. It is also pointed out by learned counsel that appellant/CICL is in observation home for more than two years and in want of trial, the appellant may not be kept behind the bar for an indefinite period, where the trial is in its very initial stage and is not likely to conclude in near future. It is further submitted by learned counsel that as per probation report, nothing appears such adverse or indicative of the fact which may suggest that appellant/CICL cannot be reformed in near future as to join the mainstream of the society. While concluding argument, learned counsel submitted that though the appellant are involved in nine more criminal cases



but, in most of the cases, his name surfaced on the basis of confessional statement of the co-accused persons, as CICL/appellant has lost his father in his early age and, therefore, he is being devoid of paternal care.

6. Learned counsel appearing on behalf of the appellant/CICL submitted that maternal uncle of the juvenile-appellant is ready to stand as a surety and furnish an undertaking that he will take care of the appellant and shall ensure that he 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 of bail submitted that CICL/appellant found involved in nine more criminal cases and there is remote chance to join the mainstream of the society as a good citizen, whereas he has fairly conceded by making submission towards merit of the case that the fatal firing was made by co-accused, namely, Balkrishna Bhardwaj @ Balaji and not by the CICL/appellant.

8. Having regard to the submissions and materials showing that the appellant has been adjudged juvenile aged about 17 years 06 months on the alleged date of occurrence, no active participation of the appellant has been alleged as also that appellant has remained in the Observation Home since



21.12.2021 and his maternal uncle is ready to stand as a surety and furnish an undertaking that if released on bail he will take care of the appellant and shall ensure that he does not fall in bad company and, in case, the appellant indulges in any unlawful act, he 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. Having regard to the submissions made by the parties and taking into consideration the material available on record, I am of the considered opinion that name of the



appellant/CICL during the course of investigation on the basis of confessional statement of co-accused, who has already been granted bail by one of the learned co-ordinate Bench of this Court. Further, taking into consideration the materials on record as well as the period of incarceration of the appellant and in the best interest of CICL, this Court is of the considered view that the impugned order passed by the court below is not in consonance with the aims and objectives of the Act.

10. In the result, I am of the opinion that the learned court below has committed material irregularity in arriving at the conclusion that grant of bail to the appellant/CICL would amount to defeating the ends of justice.

11. Accordingly, the order dated 21.12.2022 passed by learned 1st Additional Sessions Judge-cum-Children Court, Darbhanga in P.C. Case No. 6 of 2022 arising out of Singhwara P.S. Case No.143 of 2020 is hereby set aside.

12. The appeal is allowed.

13. Let the appellant be released 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 1st Additional Sessions Judge-cum-Children Court, Darbhanga in P.C. Case No. 6 of 2022 arising out of Singhwara



P.S. Case No.143 of 2020 on the following conditions:-

- (i) That one of the sureties should be the maternal uncle of the appellant; and
- (ii) That the maternal uncle of the appellant/CICL shall file an affidavit before the learned Juvenile Justice Board, Darbhanga giving specific undertaking that after release of the appellant on bail, he will take proper care of the appellant and will not allow him to fall into bad company.

(Chandra Shekhar Jha, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19.01.2024
Transmission Date	19.01.2024

