

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.4764 of 2024

In
CRIMINAL REVISION No.453 of 2024

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

XX, aged about 17 years (Gender-M), under the Guardianship of his father, namely, Md. Minnat, Resident of Mohalla- Rampara, P.S.- Nagar, Distt.- Katihar.

... .. Appellant

Versus

1. The State of Bihar
2. Nikita Kumari, aged about 25 years (Gender-F), Wife of Prahalad Paswan, Resident of Mohalla- Baigna, Ward No. 24, P.S. Nagar, Distt.- Katihar.

... .. Respondent

Appearance :

For the Appellant	:	Mr. Bimal Kumar, Advocate
For the Respondent No.2:	:	None.
For the Respondent	:	Mr. Binay Krishna, Spl. P.P.

CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

ORAL ORDER

7 20-11-2024 Heard learned counsel for the appellant and learned Spl.P.P. for the State. However, learned counsel for the respondent no. 2 has not appeared despite service of notice on her.

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 01.05.2024, 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 of the I.P.C. and Sections 3(1)(r)(s) of the SC/ST Act. Later on, Section 302 of the I.P.C. and Sections 3(2)(v) of the SC/ST Act were also added.

5. As per the prosecution case, on 09.06.2023 at about 10.45 P.M., 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 P.M., Aayush Kumar came to the informant's house and stated that he and Prahlad Paswan were going and as soon as they reached at Rampara, the co-accused Md. Sahazada, Md. Sahil, Md. Izhar, Md. Barik, Md. Dilkhush and the son of Minnat, namely, Md. Arif (appellant) 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 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 to 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 the son of Md. Minnat, namely, Md. Arif (appellant) were fleeing towards Rampada Mitter Mohalla from the spot and her husband was lying bleeding in unconscious condition and thereafter he was sent for 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 is innocent and has falsely been implicated in the present case. It is further submitted that in the F.I.R, the son of Md. Minnat has been mentioned as accused no. 7 but it is humbly submitted that Md. Minnat has three sons, namely, Md. Tarik, Md. Arif and Niyaz but no where either the informant or Aayush Kumar has clarified the specific name of the son of Md. Minnat. The informant is not an eye witness to the alleged



offence. There is no specific allegation against the appellant. It is further submitted that in course of treatment, the injured Prahalad Paswan has died on 13/14.06.2023 at night after which Section 302 of the I.P.C. was also added. It is further submitted that in the F.I.R., it has been alleged that the co-accused Md. Sahjada, Md. Sahil, Md. Barik, Md. Dilkhush and the son of Md. Minnat and Md. Ijhar assaulted the deceased with iron rod and bamboo but the doctor who conducted the postmortem of the deceased has found injury only on the head and no other injury was found on his body and as such the allegation as levelled in the F.I.R. has not been corroborated by the postmortem report of the deceased. 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 persons, namely, Md. Shoyeb @ Md. Shiheb @ Md. Shoheb @ Md. Soyeb, Md. Ijhar @ Izhar and Md. Shahjada Alam @ Md. Shahzada have already been granted bail by the then Co-ordinate Bench of this Court vide Cr. Appeal (SJ) Nos. 3448 of 2023 under order dated 09.11.2023, 3493 of 2023 under order dated 09.11.2023 and 5420 of 2023 under order dated 03.04.2024 respectively as annexed as Annexure-4 series to the present memo of appeal. 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 father 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. It is further submitted that the appellant is a juvenile. 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 07.11.2023.

7. Learned Spl.P.P. for the State has 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.

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 01.05.2024, 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, who has already been declared juvenile, be released in favour of his father 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/father 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 father will ensure that the juvenile will not repeat the offence.

(ii) Natural guardian/father 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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