

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.963 of 2025

Arising Out of PS. Case No.-59 Year-2024 Thana- BASANHI District- Saharsa

Himanshu Kumar, S/o Sanjay Yadav, Resident of village -Chharra Patti, P.S.-
Udakishunganj, District -Madhepura under Natural Guardianship of
grandfather namely Rajendra Yadav (Male), Aged about 71 years, S/O Late.
Tilkeshwar Yadav, resident of village -Chharra Patti, P.S.- Udakishunganj,
District-Madhepura.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Alok Kumar Singh, Advocate
For the Respondent/s : Mr. Abha Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

2 16-05-2025 Heard learned Advocate appearing on behalf of the

petitioner and the learned Additional Public Prosecutor for the

State.

2. The present appeal is directed against order dated
19.12.2024 passed in Criminal Appeal Case No. 29 of 2024
arising out of Basnahi P.S. Case No. 59 of 2024 registered for
the offences punishable under Section 341, 323, 307, 447, 504,
34 & 120B of the Indian Penal Code and Section 27 of the Arms
Act; later on Section 302 of the Indian Penal Code was also
added, whereby the prayer for bail of the appellant in the
aforesaid case came to be rejected. The petitioner also assailed
the order dated 05.07.2024 passed in J.J.B Case No. 74 of 2024,



against which the aforementioned appeal was preferred and the impugned order came to be passed.

3. Based upon the *fard beyan* of the informant it is alleged that on 25.03.2024 while the informant was engaged in selling fish with his uncle at Mahua Bazar, in the mean while co-accused Ashish Yadav and Biplav Yadav came there and asked for fish, whereupon some altercation took place and both of them threatened the uncle of the informant with dire consequences. Soon thereafter the petitioners alongwith other named accused persons and three unknown persons again came at their shop and co-accused Ashish Yadav and Biplav Yadav fired upon the uncle Birbal Sahani, due to which he sustained bullet injury over his head._On *halla* being raised, all the accused persons fled away. The informant also suspected the hands of Pulkit Sahani, Raban Sahani and Amar Sahani. The aforesaid *fard beyan* laid to institution of the FIR and the investigation was conducted, wherein the name of the petitioner also surfaced in the confessional statement of the co-accused. On the basis of the aforesaid material the appellant was taken into custody.

4. 4. The appellant claimed to be juvenile and thus, a Juvenile Justice Board Case No. 74 of 2024 came to be instituted and the headmaster of the school was noticed, who



produced the record of the school. It transpired that the date of birth of the appellant was recorded as 02.04.2009 and on the alleged date of occurrence that is 25.03.2024, he was 14 years 11 months and 3 days and thus, declared juvenile and sent to the remand home. Finally the aforementioned application of the petitioner giving rise to J.J.B. Case No. 74 of 2024 came to be rejected by the learned Juvenile Board, Madhepura vide order dated 05.07.2024. The petitioner aggrieved with the aforesaid order preferred Criminal Appeal Case No. 29 of 2024, which was also rejected by the 1st Additional District and Session Judge-cum-Children Court, Saharsa vide order dated 19.12.2024. Both the orders are put to challenge by the appellant.

5. Learned Advocate for the appellant submits that the judgment is not sustainable in the eye of law and the learned Appellate Court has erroneously dismissed the appeal on irrelevant consideration based upon surmises and conjectures. It is vehemently contended that the learned Court failed to consider the very input of Section 12(1) of the Juvenile Justice Act which clearly mandate that the bail to a juvenile can be refused only on account that if there appear reasonable ground for believing that the release is likely to bring him into association with any known criminal or expose him to moral,



physical or psychological danger; and that his release would defeat the ends of justice. The learned Court below would also fail to consider that the date on which alleged occurrence took place, he was below fifteen years of age and there is no specific allegation of any overt act and, in fact, the entire case is based on suspicion, as also the fact the appellant had never been involved in any crime before this case.

6. On the other hand learned Additional Public Prosecutor for the State while defending the impugned judgment submitted that apart from the materials available on record which disclose the participation of the petitioner in the crime, there is no illegality or infirmity in the judgment. It is further contended that the release of the petitioner would not be in the interest of the appellant and there is every chances that he would again come in the contact of criminals and other accused persons and, as such, keeping the petitioner under remand home would be in the interest of justice.

7. This Court has given anxious consideration to the submissions advanced by the learned Advocate for the respective parties. Before parting with this case it would be proper to reiterate the observations made by Division Bench of this Court in the case of *Lalu Kumar @ Lal Babu @ Lallu vs. The State of Bihar*, (2019) 4 PLJR 833 wherein the learned



Division Bench has given great emphasis upon the very object of the Juvenile Justice (Care and Protection of Children) Act, 2015 specially Section 12 thereof. It is ruled that while interpreting Section 12, the Board is duty bound to be guided by the fundamental principles enumerated in Section 3, specially the principles of 'best interest', 'repatriation' and 'restoration' of child which provides that a child shall be placed in institutional care as a step of last resort, after making a reasonable enquiry. In all cases the Board is required to record its reasons, if it refuses to child on bail and the circumstances that led to such a decision. It is made clear that seriousness of the offence alleged cannot be made a ground for rejecting bail in case of a child in conflict with law. The learned Division Bench further ruled that 'in the juvenile justice legal system, Parens Patriae Doctrine allows the State to step in and serve as a guardian for children, the mentally ill, the incompetent, the elderly or the disabled persons who are unable to care for themselves. Normally the natural parents and family are expected to take care of their children, but when they fail the State steps into shoes of the parents and family to provide the same care and protection as their own parents and family should have provided for them. A child in conflict with law should be treated in a manner consistent with the promotion of the child sense of dignity



involved, which reinforces the child's respect for the human rights and fundamental freedom of others, which take into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in the society.

8. Bare reading of Section 12, there is no iota of confusion that the bail to the juvenile can be refused only if there is a reasonable grounds for believing that the release is likely to bring that person into association with any known criminal or expose the said person to moral, physical and psychological danger or the persons release would defeat the ends of justice. In the case in hand, this Court has meticulously examined the record and found that there is no assessment report which suggest that there is any such ground available which put an eclipse over the right of the appellant.

9. In the case in hand, this Court also finds that there is no criminal antecedent of the petitioner and he was also studying in a school, that apart he belongs to a good family, hence in the opinion of this Court, his family would serve the better object of the act ensuring his development and rehabilitation, all the more the release of the petitioner on bail would in no way be against the best interest of the child. The Court time and again reminded that the family is considered as



the best and most desirable institution for ensuring welfare and rehabilitation of the child, if the family environment is conducive for the development of the child. Considering the aforesaid facts, this Court is of the view that the impugned order is unsustainable in the eyes of law and accordingly hereby set aside. The present appeal stands allowed.

10. The appellant is directed to be released on bail, on furnishing bail bond of Rs. 10,000/- (ten thousand) by his father and mother or grandfather or grandmother with the following additional conditions:-

i) The father and mother of the appellant undertake by way of affidavit that the appellant would not come into contact with any criminal;

ii) They further undertake to ensure that the petitioner would attend the Juvenile Justice Board and Courts as and when required or directed.

(Harish Kumar, J)

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