

(2024) 01 PAT CK 0062

Patna High Court

Case No: Criminal Appeal (SJ) No. 715 Of 2023

XXX

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision: Jan. 18, 2024

Acts Referred:

- Indian Penal Code, 1860 - Section 34, 120B, 307
- Juvenile Justice (Care and Protection of Children) Act, 2015 - Section 12

Hon'ble Judges: Chandra Shekhar Jha, J

Bench: Single Bench

Judgement

1. Heard learned counsel appearing on behalf of the CICL/appellant and learned APP appearing on behalf of the State duly assisted by learned counsel for the informant.
2. The present application is being preferred against judgment/order dated 02.12.2022 passed by learned Additional District Judge- 1st-cum-Special Judge (SC/ST and Children Court), Buxar in Child Case No. 17 of 2022 (CIS-Cri. Case No. 25/2022) arising out of Dumraon P.S. Case No. 239 of 2022 under Section 307, 120(B), read with Section 34 of the Indian Penal Code and 27 of the Arms Act, by which the learned Court refused to enlarge the appellant/CICL on bail.
3. The appellant/petitioner is named in the First Information Report (in short the 'F.I.R.') and in observation home since 05.06.2022. Allegation against the CICL/appellant is to commit murder of son of the informant along with his family members/co-accused persons out of previous enmity where deceased is the brother-in-law. It appears from the F.I.R. that murder was caused by firing.
4. It is submitted by learned counsel that CICL/appellant found juvenile on the date of alleged occurrence and his age was assessed by concerned Juvenile Justice Board as 17 years.
5. It is also submitted that allegation of firing is not specific against this CICL/appellant rather the same is also available against his father/co-accused. It is further pointed out that as per Social Investigation Report (in short the "S.I.R."), the deceased, who is brother-in-law of CICL/appellant, was inter-state criminal and found involved in several criminal cases connected with heinous criminal offences.
6. It is further pointed out by learned counsel that as per the S.I.R. the CICL/appellant passed his matriculation examination in the year 2021 and he was disturbed with inter-caste marriage of his sister with the deceased during the period. It is submitted that the S.I.R. speaks about the root cause of occurrence as deceased who was inter-state/district criminal, solemnized marriage with sister of CICL/appellant usually

tease the appellant on the ground of marriage and demand of dowry.

7. It is pointed out that out of said provocation perhaps the juvenile becomes disturbed mentally as per S.I.R. which compelled him to join the occurrence. It is also pointed out that CICL/appellant is not a man of criminal antecedent where investigation has been completed and as such, there is no chance of tampering with the evidence.

8. Learned counsel while appearing on behalf of CICL/appellant submitted that in view of above discussed S.I.R. it can be said safely that there is no apparent ground out of which it can be gathered that appellant/CICL cannot rejoin the mainstream of society as a good citizen in future.

9. Learned counsel further submitted that mother of the juvenile appellant is ready to stand as a surety and furnish an undertaking that she will take care of the CICL/appellant and shall ensure his studies as well as that he would not fall in bad company and would take all possible care to connect him with the mainstream of the society.

10. Learned A.P.P. for the State duly assisted by Mr. Shubham Sourav, learned counsel for the informant, while opposing the prayer of bail, submitted that fire-arm injuries were also caused by this CICL/appellant along with other co-accused who is none but his father, whereas he conceded that deceased was found involved in four or five criminal cases.

11. In view of aforesaid factual submissions and by taking note of fact that CICL/appellant having a good chance of reform as per S.I.R. as to join the mainstream of society as a good citizen in future who is a man of clean antecedent having no specific allegation of firing, where he appears to be in observation home/custody since 05.06.2022 and the social investigation report of the petitioner is not showing any adverse material against him so as to dissuade this Court for granting release of the CICL/appellant on bail, and his mother is ready to stand as a surety and furnish an undertaking that if released on bail she will take care of the CICL/appellant and shall ensure that he does not fall in bad company and, in case, the CICL/appellant 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.”**

12. The Social Investigation Report dated 09.09.2022 is now available on record. On perusal of the said report it appears that CICL/appellant is of good nature. There is no criminal antecedent against the CICL/appellant and having scope of improvement.

13. Accordingly, this court sets-aside the impugned order and directs release of the CICL/appellant 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 District Judge- 1st-cum-Special Judge (SC/ST and Children Court), Buxar in Child Case

No. 17 of 2022 (CIS-Cri. Case No. 25/2022) arising out of Dumraon P.S. Case No. 239 of 2022.

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

15. The Probation Officer shall keep on visiting the place of the CICL/appellant and shall submit periodical report to the Juvenile Justice Board (J.J.B.), Buxar, regarding conduct of the appellant. If found anything adverse against this appellant, the same will also be reported to the Board for necessary action.