

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.576 of 2015

Arising Out of PS.Case No. -null Year- null Thana -null District- SITAMARHI

1. Arun Kumar Bhagat @ Arun Kumar S/o Mahendra Mahto (under the guardianship of Mahendra Mahto) Resident of Village - Ufraulia, P.S. - Riga, District - Sitamarhi.

.... Petitioner/s

Versus

1. The State of Bihar.

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Virendra Kumar, Adv.

For the Respondent/s : Mr. Uday Chandra Prasad, APP

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 19-07-2016

This revision application under Section 53 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (for short 'J.J. Act') has been filed for setting aside the judgment and order dated 05.06.2015 passed by the learned 3rd Additional Sessions Judge, Sitamarhi in Cr.Appeal No. 23 of 2015/ 04 of 2015, whereby he has affirmed the order dated 24.04.2015 passed by the Juvenile Justice Board (for short 'JJB'), Sitamarhi in Sitamarhi P.S.Case No. 450 of 2012 corresponding to J.J.B. Case No. 1248 of 2014 and the prayer of the petitioner for bail has been rejected.

2. The petitioner has been made accused in connection with Sitamarhi P.S.Case No. 450 of 2012 registered under Sections 384, 386 and 387 of the Indian Penal Code. He was apprehended in the case on 24.04.2014 and since then he is in jail. He was declared

juvenile on 19.12.2014 and substance of accusation has already been explained to him in connection with the said case on 18.02.2015.

3. From the report submitted by the Principal Magistrate, J.J.B., Sitamarhi vide letter no. 72/16 dated 17th March, 2016, it would appear that the case is at the stage of inquiry and no witness was examined before the JJB on behalf of the prosecution till 17th March, 2016.

4. The prayer for bail of the petitioner was rejected by the JJB on 24.04.2015 on the ground that the petitioner has been made accused in some other cases too and his release is likely to bring him into association with the criminals. The appellate court has also rejected his prayer for bail on the same ground vide impugned order dated 05.06.2015.

5. It has been submitted by the learned counsel for the petitioner that the petitioner is detained in jail as would be evident from the *vakalatnama* executed by him which has been attested by the Assistant Jail Superintendent, Divisional Jail, Sitamarhi. He has submitted that the detention of the petitioner in jail is wholly illegal as the juvenile in conflict with law cannot be kept in jail under any circumstances. He has either to be kept in Observation Home or in a Safety Home during enquiry or even after he is held guilty of an offence.

6. Learned counsel for the State has opposed the application for grant of bail to the petitioner. He has submitted that the petitioner has got criminal antecedent and merely because he is detained in jail, it would not be proper for this Court to release him.

7. I have heard the respective counsel for the parties and perused the materials available on record.

8. I find force in the submission made by the learned counsel for the petitioner. I also find that the observations made by the courts below that the release of the petitioner would bring him into association with the criminals is not based on any report of the Probation Officer.

9. The JJ Act was enacted by the Parliament on 30th December, 2000 in order to amend the law relating to juveniles in conflict with law and children in need of care and protection, by providing for proper care, protection and treatment by catering to their development needs, and by adopting a child-friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation and for matters connected therewith or incidental thereto.

10. When a juvenile in conflict with law for a bailable or non-bailable offence is apprehended, or detained, or appears, or is brought before a Board, such juvenile shall be released on bail with or without surety but he shall not be so released if there appears

reasonable ground for believing that the release is likely to bring him in association with any known criminal or expose him to moral physical or psychological danger or his release would defeat the ends of justice.

11. When a juvenile in conflict with law having arrested is not released on bail under sub-section (1) of Section 12 of the JJ Act, the Board is required to send him in a 'Observation Home' or a 'Place of Safety' for such period during pendency of the inquiry regarding him as may be specified in the order in view of sub-section (3) of Section 12 of the JJ Act.

12. The terms 'Observation Home' and 'Place of Safety' used in Section 12 of the JJ Act has been defined under section 2(o) and 2 (q) of the JJ Act which reads as under;

"2(o) "observation home" means a home established by a State Government or by a voluntary organization and certified by that State Government under section 8 as an observation home for the juvenile in conflict with law.

2(q) "place of safety" means any place or institution (not being a police lock-up or jail), the person incharge of which is willing temporarily to receive and take care of the juvenile and which, in the opinion of the competent authority, may be a place of safety for the juvenile."

13. From a bare reading of definition of terms 'Observation Home' and 'Place of Safety', it would be evident that they are different from prison or police lock-up.

14. Keeping in mind the object of JJ Act and the meaning of the terms ‘Observation Home’ and ‘Place of Safety’ as defined under Sections 2(o) and 2(q) of the JJ Act, a juvenile in conflict with law cannot be kept in jail.

15. In view of the discussions made hereinabove, the order impugned dated 05.06.2015 passed by the learned 3rd Additional Sessions Judge, Sitamarhi in Cr.Appeal No. 23 of 2015/ 04 of 2015, affirming the order dated 24.04.2015 passed by the Juvenile Justice Board (for short ‘JJB’), Sitamarhi in Sitamarhi P.S.Case No. 450 of 2012 corresponding to J.J.B. Case No. 1248 of 2014 is hereby set aside. The petitioner is directed to be released on furnishing bond and sureties to the satisfaction of JJB, Sitamarhi.

16. The application stands allowed.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	
CAV DATE	
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