

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.151 of 2021

Arising Out of PS. Case No.-27 Year-2020 Thana- ASANWA District- Siwan

RAHUL KUMAR GUPTA S/o Hareram Gupta R/o village- Gangauli, P.S.-
Andar, District- Siwan, under the guardianship of his mother namely
Sonamati Devi

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Javed Aslam, Adv.

For the Respondent/s : Mr. Narsingh Tanti, APP

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

4 25-06-2021 Heard Mr. Javed Aslam, learned counsel for
revisionist/petitioner and Mr. Narsingh Tanti, learned APP for
the State through video conferencing.

2. The present Cr. Revision application has been filed
against the judgment and order dated 05.11.2020 passed in Cr.
Appeal No. 20/2020 by the learned Presiding Officer, Children
Court-cum-First Additional Sessions Judge-cum-Special Judge,
Siwan along with order dated 05.09.2020 passed by Juvenile
Justice Board, Siwan in connection with J.E. No.173/2020, GR
No. 1151/2020 arising out of Asaon PS Case No. 27/2020 for
the offence punishable under Sections 363, 366(A)/34 of the
IPC whereby and whereunder both the learned court below have
refused to release the revisionist/petitioner on bail.

3. The prosecution story, as per First Information



Report, is that sister of the informant was abducted by one Sandesh Baitha with the help of the petitioner for the purpose of marriage and it has further been alleged that one month ago, Sandesh Baitha and the petitioner had taken the sister of the informant to Mumbai.

4. Learned counsel for the petitioner submits that petitioner was declared juvenile *vide* order passed by Juvenile Justice Board, Siwan on 21.08.2020 after coming to the conclusion that the petitioner was minor at the time of alleged occurrence and was aged about 17 years, 09 months and 20 days. Learned counsel next submits that against order passed by Juvenile Justice Board, Siwan refusing the bail application, petitioner preferred an appeal bearing Cr. Appeal No. 20/2020 before the Presiding Officer, Children Court-cum-First Additional Sessions Judge-cum-Special Judge, Siwan, who by impugned judgment arrived at an erroneous conclusion that there is specific allegation against the petitioner that he along with co-accused, Sandesh Baitha abducted/kidnapped the sister of the informant and further the sister of the informant has not yet been recovered and the petitioner has stated that the victim has performed marriage with Sandesh Baitha and since she has not yet been recovered, there is a possible threat of life of



the petitioner, if released on bail. Learned counsel next submits that the finding arrived at by the learned court below that the release of the petitioner on bail would expose him to moral, physical and psychological danger, has got no basis.

5. Learned counsel has placed reliance upon Sections 3 (i) (iv) (v) and (xiv) of Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as 'the Act') which are quoted hereinbelow:-

(i) Principle of presumption of innocence:

Any child shall be presumed to be an innocent of any *mala fide* or criminal intent up to the age of eighteen years.

(iv) Principle of best interest: All decisions regarding the child shall be based on the primary consideration that they are in the best interest of the child and to help the child to develop full potential.

(v) Principle of family responsibility:- The primary responsibility of care, nurture and protection of the child shall be that of the biological family or adoptive or foster parents, as the case may be.

(xiv) Principle of fresh start: All past records of any child under the Juvenile Justice system should be erased except in special circumstances.

6. Learned counsel, referring to the above mentioned provisions, submits that as per the scheme of the Act, there is



presumption of innocence of a child in conflict with law and all decisions regarding the child shall be taken in consonance with the **principle of best interest** of the child. Learned counsel further submits that the **principle of family responsibility** and **principle of fresh start** have also been recognized in the Act.

7. Learned counsel further relies upon Section 12 of the Act which is as follows:-

12. Bail to a person who is apparently a child alleged to be in conflict with law.--

(1) When any person, who is apparently a child and is alleged to have committed a bailable or non-bailable offence, is apprehended or detained by the police or appears or brought before a Board, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 or in any other law for the time being in force, be released on bail with or without surety or placed under the supervision of a probation officer or under the care of any fit person: Provided that such person shall not be so released if there appears 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 or psychological danger or the person's release would defeat the ends of justice, and the Board shall record the reasons for denying the bail and circumstances that led to such a decision.

(2) When such person having been apprehended is not released on bail under subsection (1) by the officer-in-charge of the police station, such officer shall cause the person to be kept only in an observation home in such manner as may be prescribed until the person can be brought before a Board.

(3) When such person is not released on bail



under sub-section (1) by the Board, it shall make an order sending him to an observation home or a place of safety, as the case maybe, for such period during the pendency of the inquiry regarding the person, as may be specified in the order.

(4) When a child in conflict with law is unable to fulfill the conditions of bail order within seven days of the bail order, such child shall be produced before the Board for modification of the conditions of bail.

8. In reference to Section 12 of the Act, learned counsel for the petitioner submits that bail to a child in conflict with law is a rule and denial is an exception.

9. Learned counsel referring to the social background report of the petitioner submits that at serial no. 25, the Child Welfare Police Officer has suggested that “ *As a child being immature, parents must provide adequate supervision regarding social, emotional and educational needs*”.

10. Learned counsel, thus, submits that parents of the petitioner are ready to submit an undertaking before the court below by way of filing an affidavit stating therein that they will take proper care of their child/petitioner and will not allow him to fall into a bad company.

11. Learned counsel for the petitioner, in the aforesaid background, submits that the learned court below has failed to consider the scheme of the Act and has committed



material irregularity in arriving at the conclusion that there is a specific allegation of kidnapping against the petitioner and further that release of the petitioner on bail will expose him to moral, physical and psychological danger and further that the victim girl has not yet been recovered. As such, there is a threat of life to the petitioner from the family members of the victim. Learned counsel submits that seriousness of the alleged offence cannot be made a ground for rejection of prayer for bail to the child in conflict with law and there was no material to come to the conclusion that release of the petitioner would expose him to moral, physical and psychological danger.

12. On the other hand, learned counsel for the State submits that from perusal of Section 12 of the Act, it appears that bail is a matter of right to the petitioner and denial is an exception and in view of the fact that parents of the petitioner are ready to give an undertaking to reform their child i.e., the petitioner, this Court may consider to pass an appropriate order in accordance with the provisions of the Act.

13. From perusal of the records, it appears that petitioner is in custody since 01.08.2020.

14. Having regard to the submissions made by the parties and on perusal of the impugned order and judgment and



taking into consideration social background report, I am of the considered view that the courts below has committed material irregularity in arriving at the erroneous conclusion that the release of the petitioner will expose him to moral, physical and psychological danger inasmuch the finding arrived at by the learned courts below is not supported by any cogent reason and material. Accordingly, the impugned judgment and order passed by both the courts below are not sustainable in the eyes of law as they are not consistent with the aims and objects of the Act.

15. Accordingly, the judgment and order dated 05.11.2020 passed in Cr. Appeal No. 20/2020 by the learned Presiding Officer, Children Court-cum-First Additional Sessions Judge-cum-Special Judge, Siwan along with order dated 05.09.2020 passed by Juvenile Justice Board, Siwan are hereby, set aside and the revisionist/petitioner, RAHUL KUMAR GUPTA is directed to be released on bail on furnishing bail bond of Rs. 10,000/- (Ten Thousand) with two sureties of the like amount each to the satisfaction of learned Juvenile Justice Board, Siwan in connection with J.E. No.173/2020, GR No. 1151/2020 arising out of Asaon PS Case No. 27/2020, subject to the condition that parents of the petitioner shall file an undertaking by way of an affidavit before the learned court



below stating therein that they will take proper care of their child/petitioner and will not let him fall into a bad company.

16. With the aforesaid observation and direction, the instant application is allowed.

17. Needless to say that at the time of furnishing bail bonds all the parties shall follow the covid protocol of social/physical distancing and sporting masks.

(Anil Kumar Sinha, J)

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