

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.466 of 2020

Arising Out of PS. Case No.-340 Year-2019 Thana- BHABHUA District- Kaimur (Bhabua)

TEJBALI SINGH Son of Mahendra Singh Resident of Village - Kunj, P.S.- Bhabua, District - Kaimur, under the guardianship of his father Mahendra Singh, aged about 47 years, male, son of Dallu Singh, resident of village - Kunj, P.S.- Bhabua, District - Kaimur.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Prashant Kumar
For the State	:	Mr. Bipin Kumar
For the informant	:	Mr. Tribhuwan Narayan

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

C.A.V. ORDER

11 17-04-2021 Heard learned Counsel for the petitioner, learned Counsel for the informant and learned Additional Public Prosecutor appearing for the State, through Video Conferencing.

This appeal has been filed against the judgment and order dated 03.01.2020 passed by learned 1st Additional Sessions Judge -cum- Special Judge, Kaimur, at Bhabhua, in Adult Child Trial No. 08 of 2019, arising out of Bhabhua Police Station Case No. 340 of 2019, registered for the offences punishable under Sections 148/149/302 of the Indian Penal Code. By the impugned order, the learned 1st Additional Sessions Judge -cum- Special Judge, Kaimur, at Bhabhua, has dismissed the bail application of the appellant.



The allegation against the appellant, as per the First Information Report, is that the appellant called the nephew of the informant from his shop, took him along with him to the Daitara Baba Asthan, where other accused persons were present and all the seven accused persons, including the appellant, assaulted the nephew of the informant by means of knife and dagger, due to which the nephew of the informant died.

Learned Counsel for the petitioner submits that the petitioner was declared juvenile by order, dated 20.08.2019 passed by the learned Juvenile Justice Board, Kaimur, at Bhabhua, after coming to the conclusion that the appellant was minor at the time of alleged occurrence and was aged about 17 years and 09 months. He further submits that by order, dated 21.08.2019, the learned Juvenile Justice Board, Kaimur, at Bhabhua, has reached to the conclusion that the appellant is required to be tried as an adult and accordingly the record of the case was transferred to the Court of learned Children's Court for trial. He next submits that by the impugned order, the learned 1st Additional Sessions Judge -cum- Special Judge, Kaimur, at Bhabhua, has rejected the prayer of the appellant for bail on erroneous conclusion that there is a possibility that the appellant would fall into bad company, if released on bail and grant of bail



to the appellant may cause moral, physical and psychological danger to him. He next submits that learned 1st Additional Sessions Judge -cum- Special Judge, Kaimur, at Bhabhua, did not consider the social investigation report in correct legal perspective.

Learned Counsel for the appellant relies upon Section 3 (i), (iv), (v) and (xiv) of the Juvenile Justice (Care and Protection of Children) Act, 2015, (hereinafter referred to as “the Act”), which are quoted herein below:-

“(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”

Learned Counsel for the appellant, referring to above mentioned provisions of law, 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 the best interest of the child. He further submits that the principle of family responsibility and principle of fresh start have also been recognized under the Act.

Learned Counsel for the appellant further relied upon Section 12 of the Act, which is quoted 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 (2 of 1974) 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 may be, 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 fulfil 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.”



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

Learned Counsel for the appellant, in the aforesaid background, submits that the learned 1st Additional Sessions Judge -cum- Special Judge, Kaimur, at Bhabhua, has failed to consider the scheme of the Act and has committed irregularity in arriving at the conclusion that the appellant may fall into bad company, if released on bail and he is a person of criminal mind.

Learned Counsel for the appellant further submits that other co-accused persons, namely, Ram Ekbal Singh (by order, dated 27.11.2019, passed in Criminal Misc. No. 60945 of 2019), Deo Muni Singh (by order, dated 16.12.2019, passed in Criminal Misc. No. 83483 of 2019), Sunil Singh (by order, dated 18.12.2019, passed in Criminal Misc. No. 79530 of 2019) and Shesh Muni Singh (by order, dated 27.05.2020, passed in Criminal Misc. No. 80931 of 2019) have been granted bail by different Co-ordinate Benches of this Court and the appellant is in custody since 07.08.2019. He further submits that the father of the appellant is ready to take proper care of the appellant after release on bail and shall not allow him to fall into bad company and would try to bring change in his behaviour, if required.



This Court, by order dated 02.07.2020, had called for the social background report and social investigation report of the appellant, which is on record of this appeal. From perusal of the report, it appears that the Probationer Officer/Investigating Officer, upon detailed enquiry, has come to the conclusion that the parent of the appellant has submitted an affidavit confirming therein that the conduct of the appellant was good and the appellant has got no antecedent of any crime. The report further clarifies that both the parties are related to each other and the occurrence has taken place due to the dispute regarding due amount. The report further states that the Sarpanch of the Gram Panchayat Ruiya has also confirmed that the character of the appellant was good.

On the other hand, learned Additional Public Prosecutor submits that from perusal of Section 12 of the Act, it appears that bail is a matter of right to a child in conflict with law and denial is exception and in view of the fact that father has given an undertaking to reform her child, i.e. the appellant, this Court may consider to pass appropriate order in the best interest of the child in conflict with law.

Having regard to the submissions made by the parties, on perusal of the impugned order and taking into consideration



the social investigation report, I am of the considered opinion that there is possibility of reform in the appellant inasmuch as he has got no criminal antecedent and the father of the appellant is ready to take proper care of the appellant after his release on bail and there is no likelihood that the appellant will fall into association with any known criminal(s). As such, the conclusion arrived at by learned 1st Additional Sessions Judge -cum- Special Judge, Kaimur, at Bhabhua, that the appellant may fall into bad company, is not sustainable in the facts and circumstances of the case.

Accordingly, this appeal is allowed and the order dated 03.01.2020, passed by learned 1st Additional Sessions Judge -cum- Special Judge, Kaimur, at Bhabhua, in Adult Child Trial No. 08 of 2019, arising out of Bhabhua Police Station Case No. 340 of 2019, is hereby set aside.

Let the appellant, above named, 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 1st Additional Sessions Judge -cum- Special Judge, Kaimur, at Bhabhua, in connection with Adult Child Trial No. 08 of 2019, arising out of Bhabhua Police Station Case No. 340 of 2019, subject to the following conditions:-



(i) that one of the bailors shall be the father of the appellant;

(ii) that the father of the appellant shall file an affidavit before the learned 1st Additional Sessions Judge -cum- Special Judge, Kaimur, at Bhabhua, giving specific undertaking that after release of the appellant on bail, he will take proper care of the appellant and will not allow him to fall into bad company.

(Anil Kumar Sinha, J.)

Prabhakar Anand/-

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