

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.254 of 2021

Arising Out of PS. Case No.-129 Year-2020 Thana- MUFFASIL District- Aurangabad

NAVAL KUMAR @ NAWAL KUMAR Son of Rajesh Singh Through his
father Rajesh Singh, Resident of Village - Kapasiya, P.S.- Aurangabad
(Mufassil), District – Aurangabad Petitioner/s

Versus

The State of Bihar Respondent/s

Appearance :

For the Petitioner/s : Mr. Ashok Kumar Singh, Adv.
For the Respondent/s : Dr. Ravindra Kumar, APP

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

4 23-06-2021 Heard Mr. Ashok Kumar Singh, learned counsel for
revisionist/petitioner and Dr. Ravindra Kumar, learned APP for
the State through video conferencing.

2. The present Cr. Revision application has been filed
against the judgment and order dated 23.02.2021 passed in Cr.
Appeal No. 02/2021 by the learned 1st Additional Sessions
Judge-cum-Special Judge (Children Court), Aurangabad along
with order dated 16.12.2021 passed by Juvenile Justice Board,
Aurangabad in connection with GR. No.1309/2020/JJB No.
654/2020 arising out of Aurangabad (Mufassil) PS Case No.
129/2020 for the offence punishable under Sections
302/201/120(B)/34 of the IPC and Section 27 of the Arms Act
whereby and whereunder both the learned court below have
refused to release the revisionist/petitioner on bail.

3. The allegation, as per prosecution story, lodged by



the informant, a police officer that one Neeraj Kumar was having a love affair with one Amrita Kumari which was not liked by the family members of Amrita Kumari which led the murder of duo. It has further been alleged that 5-6 named accused persons along with petitioner went to the house of Neeraj Kumar where Amrita had gone. The accused persons tried to take back Amrita to her house but she did not agree which enraged Manish Kumar who stabbed her to death with the help of other accused persons. Thereafter, the said Manish Kumar with the help of other accused persons also assaulted Neeraj Kumar and killed him by means of knife. The petitioner is said to be a minor one and he is a cousin of the deceased, Amrita Kumari.

4. Learned counsel for the petitioner submits that petitioner was declared juvenile *vide* order passed by Juvenile Justice Board, Aurangabad on 13.11.2020 after coming to the conclusion that the petitioner was minor at the time of alleged occurrence and was aged about 15 years, 04 months and 24 days. Learned counsel next submits that against order passed by Juvenile Justice Board, Aurangabad refusing the bail application, petitioner preferred an appeal bearing Cr. Appeal No. 02/2021 before the 1st Additional Sessions Judge-cum-



Special Judge (Children Court), Aurangabad, who by impugned judgment arrived at an erroneous conclusion that petitioner has committed heinous crime and release of the petitioner on bail would defeat the ends of justice.

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 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 the petitioner, if released on bail would defeat the ends of justice as the petitioner has committed a heinous crime. Learned counsel further submits that the main assailant, who has killed the deceased, is Manish Kumar and petitioner being family member of the deceased girl, Amrita Kumari, has been dragged in this case with oblique motive. Learned counsel further submits that petitioner has got no criminal antecedents and parents of the petitioner is ready to submit an undertaking before the court below by way of filing an affidavit stating therein that they will take proper care of the



petitioner and will not allow him to fall in a bad company.

10. 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 is ready to give an undertaking to reform her child i.e., the petitioner, this Court may consider to pass an appropriate order in accordance with the provisions of the Act.

11. From perusal of the records, it appears that petitioner is in custody since 11.09.2020

12. Having regard to the submissions made by the parties and taking into consideration the material on record and the fact that there was no material before the learned lower court to come to the conclusion that the release of the petitioner would defeat the ends of justice and the court below has rejected the bail application on the ground that the petitioner has committed a heinous offence, accordingly, this Court is of the considered view that the impugned judgment and order passed by both the court below are not sustainable in the eyes of law inasmuch as they are not consistent with the aims and objects of the Act.

13. Accordingly, the judgment and order dated



23.02.2021 passed in Cr. Appeal No. 02/2021 by the learned 1st Additional Sessions Judge-cum-Special Judge (Children Court), Aurangabad along with order dated 16.12.2021 passed by Juvenile Justice Board, Aurangabad are hereby, set aside and the revisionist/petitioner, NAVAL KUMAR @ NAWAL KUMAR 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, Aurangabad in connection with GR. No.1309/2020/JJB No. 654/2020 arising out of Aurangabad (Mufassil) PS Case No. 129/2020, 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.

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

15. 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.

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(Anil Kumar Sinha, J)

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