

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.282 of 2021

Arising Out of PS. Case No.-493 Year-2020 Thana- WAJIRGANJ District- Gaya

RISHU KUMAR S/o Dinesh Mistry R/o village- Dakhingaon, P.S.- Wazirganj, District- Gaya, through his father and natural guardian namely Dinesh Mistry aged about 45 years (male) S/o Ram Ratan Mistry, R/o village- Dakhingaon, P.S.- Wazirganj, District- Gaya

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Shailesh Kumar, Advocate
For the Respondent/s : Mr. Mrityunjay Kumar Gautam, A.P.P. .

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

2 21-06-2021 Heard Mr. Shailesh Kumar, learned counsel for the petitioner and Mr. Mrityunjay Kumar Gautam, learned Additional Public Prosecutor appearing for the State through video conferencing.

2. This Criminal Revision application has been preferred against the Judgment and order dated 20.2.2021 passed by learned Special Judge (Children Court), Gaya, in Cr. Appeal (Juvenile) No. 11 of 2021 (C.I.S.) arising out of the order dated 12.01.2021 passed in Wazirganj P.S. Case No. 493 of 2020 by learned ACJM-cum-Principal Magistrate, Juvenile Justice Board, Gaya, in connection with G.R. No. 5269 of 2020, Misc. No. 192 of 2020 registered for the offences punishable under Sections 302 and 201/34 of the I.P.C. By the impugned



order and judgment the learned Special Judge (Children Court), Gaya, has refused to release the revisionist – petitioner herein on bail and affirmed the order of learned Juvenile Justice Board.

3. The prosecution story as per the First Information Report lodged by the informant Vipin Singh is that son of the informant was found missing from his house and upon search the informant found the Mobile phone of his son switched off and son of the informant did not return at night. Thereafter, the informant came to know that his son has been killed and his dead body was thrown in the pond situated near western side of Narayan Service Station.

4. Learned counsel for the petitioner submits that the petitioner is not named in the First Information Report and he was declared juvenile by the Juvenile Justice Board, Gaya, after arriving at the conclusion that the petitioner was minor at the time of alleged occurrence and was aged about 13 years 7 months. Learned counsel further submits that against the order passed by the Juvenile Justice Board, refusing the bail application, the petitioner, preferred an appeal bearing Criminal Appeal (Juvenile) No. 11 of 2021 (C.I.S.) before the learned Special Judge (Children Court), Gaya, who by the impugned judgment and order has rejected the bail application of the



petitioner and arrived at the conclusion that the petitioner might again come in the association of bad company if he is released on bail and granting bail to the petitioner would defeat the ends of justice. Learned counsel for the petitioner relies upon Section 3 (i), (iv), (v) &(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”*

5. Learned counsel referring to 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 under the Act. Learned counsel 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.”

6. In reference to Section 12 of the Act, learned counsel submits that bail to a child in conflict with law is a rule and denial is exception and parents of the petitioner are ready to take care of their child i.e. the petitioner and they would try to keep him away from bad company and would also try to bring change in his behavior. As such, one chance may be given to the petitioner to reform himself.

7. Learned counsel further submits that the petitioner has got no criminal antecedent and his name



transpired on the basis of confessional statement made by the co-accused Mohan Kumar and even from perusal of the same, it would be evident that no overt act has been attributed to the petitioner. Learned counsel next submits that the petitioner is in custody since 13.11.2020.

8. Learned counsel referring to the order dated 12.01.2021 passed by the Juvenile Justice Board, Gaya, in which it has been recorded that the social investigation report of the petitioner has been reported to be of good nature and character and no other case has been reported to be pending against the petitioner. Learned counsel next submits that the father and mother of the petitioner are ready to submit their undertaking before the learned court below stating therein that they shall take proper care of the petitioner and also not allow him to fall in bad company.

9. Learned counsel in the aforesaid back ground 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 release of petitioner on bail will amount to defeating the ends of justice and the petitioner may fall in bad company if he is released on bail.

9. 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 exception. Learned counsel further submits that the social investigation report also corroborates that the petitioner was reported to be in bad company and there was lack of control of his parents over him.

10. Having regard to the submissions made by the parties, on perusal of the impugned order and judgment and taking into consideration the fact that there was no material before the learned court below to come to the conclusion that release of the petitioner on bail would defeat the ends of justice and further he may fall in bad company and the court below has also not assigned any reason for arriving at the said conclusion, as well as parents of the petitioner are ready to take responsibility to reform the child, this Court is inclined to grant one opportunity to the petitioner and is inclined to release him on bail.

12. Accordingly, I find that the impugned orders are not sustainable in law as well as Act and the judgment and order dated 20.2.2021 and 12.01.2021 respectively passed by learned Special Judge (Children Court), Gaya, and Juvenile Justice Board Gaya in Cr. Appeal (Juvenile) No. 11 of 2021



(C.I.S.) as well as Misc. No. 192 of 2020 (G.R. No. 5269 of 2020) are hereby set aside and the petitioner is directed to be released on bail on furnishing bail bond of Rs. 20,000/- (twenty thousand) with two sureties of the like amount each to the satisfaction of learned Juvenile Justice Board, Gaya / court concerned in connection with Wazirganj P.S. Case No. 493 of 2020 subject to the condition that the parents of the petitioner shall file an affidavit before the concerned court below giving the undertaking that that they shall take good and proper care of the petitioner and shall try to keep him away from the bad company and also try to bring change in the behaviour of the petitioner.

13. With the aforesaid observation and discussion, this application is allowed.

(Anil Kumar Sinha, J)

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