

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL APPEAL (SJ) No.1346 of 2020**

Arising Out of PS. Case No.-155 Year-2017 Thana- BIBHUTIPUR District- Samastipur

SONU KUMAR Son of Maheshwar Singh @ Maheshwar Mahto Monor through his father and natural guardian namely Maheshwar Singh @ Maheshwar Mahto, aged about 53 years (Male), Son of Late Thakuri Mahto, resident of Village- Patpara South, P.S.- Bibhutipur, District- Samastipur.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

**Appearance :**

|                      |   |                                                               |
|----------------------|---|---------------------------------------------------------------|
| For the Appellant/s  | : | Mr. Ajay Kumar Thakur, Advocate<br>Mr. Pravin Kumar, Advocate |
| For the Respondent/s | : | Mr. Jainul Hoda., Advocate<br>Mr. Abhay Kumaer, Advocate      |

**CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD**  
**ORAL ORDER**

- 13    09-04-2021
1. Heard learned Counsel for the appellant and the learned Counsel for the respondents.
  2. This appeal is directed against the order dated 8.3.2019 passed by 1st Additional Sessions Judge -cum- Children Court, Samastipur in Bibhutipur PS Case No. 155 of 2017 registered under Section 302/34 IPC and Sections 25(1-B)/A/26/27/35 Arms Act by which application for release of the appellant has been rejected. Appellant claims to be a child in conflict with law aged about 17 years 9 months and 13 days at the time of the alleged offence, who has been assessed to be aged between 17 -18 years has been rejected.
  3. The appellant's prayer for bail under Section 12 of the Juvenile Justice Act (hereinafter referred to as 'the J. J. Act') has been rejected vide order dated 8.3.2019 passed by 1st Additional Sessions Judge -cum – Children Court, Samastipur, which is the order under appeal in the instant proceeding.
  4. The prosecution case in brief is that one Mausam Kumari lodged her written report addressed to the Office Incharge of



Bibhutipur Police Station stating therein interalia that her father Late Bikram Prasad and mother Nilam Singh had died due to fire arm injury on 18.7.2017 in morning at 5.30 AM and she is an eye witness of the said occurrence. The person who fired are Pankaj Kumar and Sonu Kumar (petitioner). First firing hit on her mother and when her father came to rescue her he was also fired at in her presence when her parents died. Thereafter Pankaj Kumar and Sonu Kumar ran to kill her brother, the informant, her sister namely Suruchi Kumari, aged about 13 years, and Prins Kumar aged about 10 years. She along with brother and sister fled away outside. Along with Pankaj Kumar one Ashok Kumar was also there. Some days earlier her father had given information to the Bibhutipur Police Station about threat on his life and life of family members and had requested to take necessary action.

5. Learned Counsel representing the appellant submits that before transferring the trial to the Children's Court, the Juvenile Justice Board was required to undertake a preliminary assessment under Section 15 of the Act that there is a need for trial of the child as an adult. After receipt of the Board's preliminary assessment, Children's Court also, as per Section 19 of the Act was first required to decide that there existed a need to try the child as an adult. Only thereafter the Child Court could have proceeded with the trial proceedings, including consideration of the prayer for bail as an adult. That not having been done there is no basis for the instant appellant to be tried before the Child Court as an adult. Fact that the offence alleged is heinous, per se cannot be the basis for transferring the records and the case for consideration before the Child Court. He also submits that being a child in conflict with law the petitioner was legally entitled to bail by the Child Court under Section 12 of the J. J. Act. His prayer for release could only have been rejected if the conditions contemplated under the proviso to Section 12(1) of the J. J. Act existed. In the instant case the Child Court has not found that



conditions contemplated under the proviso to Section 12(1) of the J. J. Act existed. The Children Court therefore had no option but to release the petitioner on bail.

6. Learned Counsel submits that in respect of issue regarding transfer of the case to the Children Court being not in accordance with law, the appellant would take appropriate steps in accordance with law.

7. Learned APP has opposed the prayer for bail. He submits that the order rejecting his prayer for bail takes note of the report forming the basis of conclusion to transfer the matter to the Child Court for trying the instant appellant as an adult having regard to the fact that he is accused of a heinous crime. The Child Court has also proceeded to take up the trial and consider the appellant as an adult.

8. For considering the rival submissions, this Court would observe that Section 12 of the J. J. Act deals with bail to a person who is apparently a child alleged to be in conflict of law. The same mandates release of the child on bail as a rule. For rejection of the prayer for release on bail the proviso to Section 12(1) of the J. J. Act carves out certain exceptions. Only if there appears to be reasonable grounds for believing that release of the child is likely to bring him in association with any known criminal; or that his release is likely to expose him to moral, physical or psychological danger, prayer for release on bail may be rejected. Bail can also be rejected if there are reasonable grounds for believing that his release would defeat the ends of justice. Specific reasons are required to be recorded in this regard as per the proviso to Section 12(1) of the J. J. Act.

9. Copy of the Social Investigation Report is available before this Court as part of the lower court records, which has been received pursuant to earlier order of this Court. The same does not disclose any material which may be the basis for formation of an



opinion that release of the petitioner was likely to bring him in association with any known criminal or expose him to moral, physical or psychological danger. There is no material on record to conclude that petitioner's release would, in any manner defeat the ends of justice. Therefore none of the conditions contemplated in the proviso to Section 12(1) of the J. J. Act exists for rejecting the petitioner's prayer for release on bail.

10. While rejecting the petitioner's prayer for release on bail, the Child Court in its order dated 08.03.2019, has not referred to existence of any material to form an opinion that any of the conditions contemplated under the proviso to Section 12(1) were satisfied for rejecting the petitioner's prayer for bail.

Perusal of the Social Investigation Report which forms part of the lower court records, shows that the petitioner and his friends were having positive and good relations with each other. His neighbours have stated that he was having a positive behavior towards his surroundings and was cooperative by nature and that he may not commit any offence. The petitioner's profile in the Social Investigation report is positive regarding petitioner's character at social level. He also does not have any criminal antecedents.

11. In absence of any reason in the order dated 08.03.2019 regarding any reasonable grounds for believing the existence of any of the conditions contemplated in the proviso to Section 12(1) of the J. J. Act, the Children Court could not have rejected the prayer for release on bail. The petitioner was legally entitled to bail in view of Section 12 of the J. J. Act. The conditions precedent to rejection of prayer for release of child in conflict with law on bail mandated by the proviso to Section 12(1) of the J. J. Act were not fulfilled. There is no such finding by the Children Court. In fact the lower court record negates the existence of conditions precedent for rejection of prayer made by a child in conflict with law for release on bail. The order dated 08.03.2019 therefore is legally unsustainable being



contrary to the letter, intent and object of the J. J. Act. The same is set aside.

12. The issue regarding the transfer of the trial by the J. J. Board to the Children Court being illegal is being left open as it has been submitted by petitioner's Counsel that they would be challenging the transfer, in accordance with law.

13. Having considered all facts and circumstances and also that the petitioner has been in custody for about two and half years, let the appellant above named, a juvenile, be released on bail on his furnishing bail bond of Rs. 10,000/- with two sureties of the like amount each to the satisfaction of learned 1st Additional Sessions Judge -cum- Children Court, Samastipur in connection with Bibhutipur PS Case No. 155 of 2017, in favour of his father, who shall keep him under his guardianship and produce him as and when required and also subject to the condition that one of the bailors of the petitioner shall be his father who at the time of filing of the bonds, shall also give an undertaking that he will take proper care of the appellant and in case the appellant does not act as per his advice, he shall report the matter to the officer-in-Charge of the concerned police station and further during the period of bail the appellant will be under the supervision of the concerned Probation Officer.

14. In the result, the appeal is allowed and the impugned order dated 8.3.2019 is set aside.

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**(Madhuresh Prasad, J)**

