

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.287 of 2021

Arising Out of PS. Case No.-9 Year-2021 Thana- BUNIYAD GANJ District- Gaya

DEEPAK KUMAR @ DIPAK KUMAR S/o Ram Balak Prasad R/o village- Ekamba, P.S.- Wazirganj, District- Gaya through his natural guardian and Mother namely Sarda Devi @ Sharda Devim, W/o Ram Balak Prasad, R/o village- Ekamba, P.S.- Wazirganj, District- Gaya, At present R/o Mohalla- GRP Colony, Station Road, P.S.- Kotwali, District- Gaya

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Tabish Sharfuddin, Adv.

For the Respondent/s : Mr. Nawal Kishore Prasad, APP

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

2 22-06-2021 Heard Mr. Tabish Sharfuddin, learned counsel for revisionist/petitioner and Mr. Nawal Kishore Prasad, learned APP for the State through video conferencing.

2. The present Cr. Revision application has been filed against the judgment and order dated 16.03.2021 passed in Cr. Appeal (Juvenile) No. 19/2021 (CIS) by the learned Special Judge (Children Court), Gaya along with order dated 26.02.2021 passed by Juvenile Justice Board, Gaya in connection with GR. No.327/2020/Misc.No. 31/2021 arising out of Buniyadganj PS Case No. 09/2021 for the offence punishable under Sections 25(1-b), a, 26 and 35 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 First Informant Report, is that the police intercepted the motorcycle of the petitioner on which two persons were riding and recovered one loaded magazine with two cartridges and one firearm from another co-accused, namely, Ranjeet Kumar.

4. Learned counsel for the petitioner submits that petitioner was declared juvenile *vide* order passed by Juvenile Justice Board, Gaya on 15.02.2021 after coming to the conclusion that the petitioner was minor at the time of alleged occurrence and was aged about 14 years, 07 months and 12 days. Learned counsel next submits that against order passed by Juvenile Justice Board, Gaya refusing the bail application, petitioner preferred an appeal bearing Cr. Appeal (Juvenile) No. 19/2021 before the learned court of Special Judge (Children Court) Gaya, who by impugned judgment arrived at an erroneous conclusion that release of the petitioner on bail may expose him to moral, physical and psychological danger and would also defeat the ends of justice and the petitioner may fall in a bad company.

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 sub-section (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, may expose to moral, physical and psychological danger and would also defeat the ends of justice inasmuch as there is no material before the learned court below to arrive at this conclusion. Learned counsel further submits that petitioner having no criminal antecedents is in custody since 19.02.2021.

10. Learned counsel further submits that the co-accused, from whose possession firearm was recovered, has been released on bail by the learned court below itself vide order dated 23.03.2021 in BP No. 410/2021.

11. Learned counsel for the petitioner submits that mother of the petitioner is ready to give an undertaking before the court below by way of filing an affidavit stating therein that she will protect and take proper care of her child and would also not allow him to fall in a bad company.



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 mother 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 scheme of the Act.

13. 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 expose him to moral, physical or psychological danger and would defeat the ends of justice and it merely confirmed the order passed by the J.J. Board, Gaya, therefore, in my considered view, the impugned judgment and order passed by both the court below are not sustainable in the eyes of law.

14. Accordingly, judgment and order dated 16.03.2021 passed in Cr. Appeal (Juvenile) No. 19/2021 (CIS) by the learned Special Judge (Children Court), Gaya along with order dated 26.02.2021 passed by Juvenile Justice Board, Gaya are hereby, set aside and the revisionist/petitioner, DEEPAK KUMAR @ DIPAK 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, Gaya in connection with GR. No.327/2020/Misc.No. 31/2021 arising out of Buniyadganj PS Case No. 09/2021, subject to the condition that mother of the petitioner shall file an undertaking by way of an affidavit before the learned court below stating therein that she will take proper care of his child/petitioner and will not allow him to fall into a bad company.

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

16. 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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