

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.359 of 2020

Arising Out of PS. Case No.-252 Year-2018 Thana- WARISLIGANJ District- Nawada

GUDDU KUMAR, Son of Anil Singh Resident of Village - Daulatpur, P.S.- Warisaliganj, District - Nawada through his mother the natural guardian namely Rekha Devi, aged about 32 years (Female), Wife of Anil Singh, Resident of Village - Daulatpur, P.S.- Warisaliganj, District - Nawada.

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Ajay Kumar Thakur, Advocate
For the Respondent/s : Mr. Nawal Kishore Prasad, APP

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

5 05-04-2021 Heard Mr. Ajay Kumar Thakur, learned counsel for the petitioner and Mr. Nawal Kishore Prasad, learned A.P.P. appearing for the State through video conferencing.

2. This Criminal Revision application has been filed against the judgment and order dated 12.02.2020 passed by learned 1st Additional District & Sessions Judge- cum- Special Judge, Nawada in Cr. Appeal (Juvenile) No. 21 of 2019 arising out of the order dated 12.07.2019 passed by learned Principal Magistrate, Juvenile Justice Board, Nawada in connection with Warisaliganj P.S. Case No. 252 of 2018 registered for the offence punishable under Section 302/34 of the I.P.C. and Section 27 of the Arms Act. By the impugned order and judgment, the learned Special Judge, Nawada has refused to



release the revisionist – petitioner herein on bail.

3. The allegation against the petitioner as per the First Information Report is that he along with other accused persons fired indiscriminately upon the brother of the informant leading to his death.

4. Learned counsel for the petitioner submits that the petitioner was declared juvenile by order dated 10.07.2019 passed by the learned Juvenile Justice Board, Nawada after coming to the conclusion that the petitioner was minor at the time of alleged occurrence and was aged about 17 years 06 months 16 days. Learned counsel further submits that against the order passed by Juvenile Justice Board refusing the bail application, the petitioner preferred appeal bearing Cr. Appeal No.21 of 2019 before the learned Special Judge, Nawada who by the impugned Judgment and order has arrived at erroneously conclusion that if the petitioner would be released on bail, there is a possibility that he may fall in the company of criminals. Learned counsel next submits that this finding has arrived at by the learned Court below without taking into consideration the social investigation report of the petitioner. 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 hereinbelow as follows:-

“(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.

7. Learned counsel 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 there is possibility that the petitioner would fall in the company of criminals, if released on bail.

8. This court by order dated 18.09.2020 had called for the social background report and social investigation report of the petitioner in the matter, which are on record. From perusal of the report, it appears that the Probation Officer upon detailed inquiry has come to the conclusion that if the petitioner is released on bail, there would not be any difficulty in social and economic rehabilitation of the petitioner and further that the petitioner may be kept outside of the village for some time inasmuch as there is an atmosphere of revenge and dispute between both sides.

9. Learned counsel for the petitioner submits that petitioner is student and has appeared and passed matriculation examination and will be seeking admission in Intermediate course in a college situated outside of the village. Learned counsel further submits that the mother of the petitioner who is



natural guardian of the petitioner has undertaken that she would take due care of the petitioner and will not allow him to fall into the company of anti-social element.

10. From perusal of the record it appears that petitioner has remained in custody since 27.08.2018.

11. 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 and in view of the fact that mother has given undertaking to reform her child i.e. petitioner, this court may consider to pass appropriate order in the best interest of the child.

12. Having regard to the submissions made by the parties, on perusal of the impugned order and judgment and taking into consideration the social background report and social investigation report, I am of the considered opinion that the learned court below has committed material irregularity in arriving at the conclusion that the petitioner may fall into company of criminals after release on bail.

13. Accordingly, the judgment and order dated 12.02.2020 and 12.07.2019 respectively passed in Cr. Appeal (Juvenile) No. 21 of 2019 by learned 1st Additional District and



Sessions Judge – cum- Special Judge, Nawada and learned Principal Magistrate, Juvenile Justice Board, Nawada 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, Nawada / court concerned in connection with Warisaliganj P.S. Case No. 252 of 2018, on the following condition:-

(i) that one of the bailors shall be the mother of the petitioner.

(Anil Kumar Sinha, J)

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