

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.389 of 2020

Arising Out of PS. Case No.-23 Year-2020 Thana- KUMAR KHAND District- Madhepura

VIRU KUMAR @ GAURAV KUMAR S/o under the guardianship of his father namely Shailendra Yadav Resident of Village-Gadhiya Navtoliya P.S- Kumarkhand, District-Madhepura.

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Dinesh Prasad Verma, Advocate
For the Respondent/s : Mr. Mukeshwar Dayal, A.P.P.

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

3 29-01-2021 1. Heard Mr. Dinesh Prasad Verma, learned counsel for the petitioner and Mr. Mukeshwar Dayal, learned A.P.P. appearing for the State.

2. This Criminal Revision application has been filed against the judgment and order dated 29.05.2020 passed by learned Additional District & Sessions Judge 1st- cum Juvenile Court, Madhepura, in Cr. Appeal 10 of 2020 C.I.S. No. 10/2020 by which the learned Additional District & Sessions Judge 1st cum Juvenile Court, has affirmed the order dated 16.5.2020 passed by the Juvenile Justice Board in connection with Juvenile Justice Board Number 15/2020 CIS No. 174/2020 arising out of Kumarkhand P.S. Case No. 23/2020 registered for the offences punishable under Sections 302/34 of the Indian



Penal Code. By the impugned order and judgment the learned Additional District & Sessions Judge, 1st cum Juvenile Court, Madhepura, has refused to release the revisionist – petitioner herein on bail.

3. The allegation against the petitioner as per the First Information Report is that on 30.01.2020 the informant along with her wife and son namely Gaurav Kumar had gone in the Pandal of Sarswati Puja and while returning, the petitioner along with other co-accused persons surrounded and abused them and on the order of Balo Yadav, the petitioner allegedly fired upon the son of the informant, due to which, he died.

4. Learned counsel for the petitioner submits that the petitioner was declared juvenile by an order dated 20.03.2020 passed by the learned Juvenile Justice Board after coming to the conclusion that the petitioner was minor at the time of alleged occurrence and was aged about 15 years 07 months 25 days. Learned counsel has denied the allegation and submits that during course of investigation, the Police has submitted final form against the co-accused who had allegedly ordered the petitioner to fire upon the deceased and has not been sent up for trial and another co-accused namely, Saurav Kumar who is brother of the petitioner has also not been sent up for trial.



Learned counsel next submits that against the order passed by the Juvenile Justice Board refusing the bail of the petitioner, the petitioner preferred an appeal bearing Criminal Appeal No. 10/2020, CIS No. 10/2020 before the learned 1st Additional Sessions Judge cum Juvenile Court, Madhepura, who by the impugned judgment and order arrived at erroneous conclusion that taking into consideration the gravity of the offence it is not proper to release the petitioner on bail. Learned counsel next 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:-

“(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 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. Learned counsel further submits that there was no material before the court below to believe that;

(i) release of the petitioner on bail would bring him into association with any known criminal.

(ii) the release is likely to expose the said person to moral or psychological danger.

7. Learned counsel also submits that the court below has not assigned any reason as to how in the event of grant of bail, the ends of justice would be defeated. Learned counsel submits that father of the petitioner has given undertaking that



he will take care of the petitioner if he is released on bail.

8. 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 since the petitioner has committed serious offence, as such, it is not proper to release him on bail.

9. This court by order dated 21.12.2020 had called for the social background report and social investigation report of the petitioner in the matter, which has been furnished and is on record. From perusal of the report it would be evident that the child in conflict with law had friendship with the victim namely, Gaurav Kumar and has a normal social behaviour. The report further states that no other case is registered against the child in conflict with law, but the villagers reported of his friendship with victim who was alleged to be involved in criminal activities.

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 exception and taking into the gravity of the offence, the case of the petitioner falls under exception of Section 12 of the Act and



may not be in the best interest of the child.

11. From perusal of the record it appears that petitioner has remained in custody since 11.02.2019.

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 of the present petitioner, I am of the considered opinion that the learned court below has committed material irregularity in arriving at the conclusion that grant of bail to the petitioner in serious offence would not be proper.

13. Accordingly, this Cr. Revision application is allowed and the judgment and order dated 29.05.2020 and 16.05.2020 respectively passed in Cr. Appeal No. 10/2020, CIS No. 10/2020 and Juvenile Justice Board No. 15/20, CIS No. 174 of 2020 by the learned Additional District and Sessions Judge 1st cum Juvenile Court, Madhepura and learned Juvenile Justice Board, Madhepura, are hereby set aside and the petitioner is directed to be released on bail on furnishing bail bonds of Rs. 10,000/- (ten thousand) with two sureties of the like amount each to the satisfaction of learned Juvenile Justice Board, Madhepura / court concerned in connection with J.J.B. No. 15/20, C.I.S. No. 174/20 arising out of Kumarkhand P.S. Case



No. 23 of 2020 subject to the condition that one of the bailors shall be the father of the petitioner.

(Anil Kumar Sinha, J)

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