

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL REVISION No.403 of 2020

Arising Out of PS. Case No.-360 Year-2019 Thana- GAYA KOTWALI District- Gaya

SAHIL KUMAR @ SAIL PASWAN Son of Late Jitendra Paswan Resident of Mohalla- Bangla Asthan, Police Station- Kotwali, District- Gaya under the guardianship of his mother namely Rekha Devi, Wife of Late Jitendra Paswan, resident of Mohalla- Bangla Asthan, Post- R.S. Gaya, Police Station- Kotwali, District- Gaya

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Manish Kumar No. 2

For the Respondent/s : Mr. Nawal Kishore Prasad

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

ORAL ORDER

3 17-05-2021 Heard learned Counsel for the petitioner and learned Additional Public Prosecutor for the State, through Video Conferencing.

This revision application has been filed against the judgment and order, dated 30.06.2020, passed by learned 1st Additional Sessions Judge -cum- Special Judge, Children Court, Gaya, in Criminal Appeal (Juvenile) No. 36 of 2020, arising out of Kotwali Police Station Case No. 360 of 2019, registered for the offences punishable under Sections 147/148/149/323/307/379/427/448/504/506 of the Indian Penal Code and Section 27 of the Arms Act. By the impugned order, the learned 1st Additional Sessions Judge -cum- Special Judge, Children Court,



Gaya, has, while confirming the order, dated 20.03.2020, passed, in Misc. Case No. 02 of 2020, by learned Juvenile Justice Board, Gaya, dismissed the bail application of the petitioner.

The allegation, as per the First Information Report, is that on the alleged date of occurrence, 20-25 youths, armed with country-made pistol, came at the shop of the informant and enquired about the son of the informant and thereafter, the accused persons damaged the counter of the shop, took away a sum of Rs. 30,000/- from the cash box.

Learned Counsel for the petitioner submits that the petitioner was declared juvenile by the learned Juvenile Justice Board, Gaya, after coming to the conclusion that the petitioner was minor at the time of alleged occurrence, aged about 15 years 09 months 19 days. He further submits that against the order, dated 20.03.2020, passed by the learned Juvenile Justice Board, Gaya, the petitioner preferred Criminal Appeal (Juvenile) No. 36 of 2020 before the learned 1st Additional Sessions Judge -cum- Special Judge, Children Court, Gaya, who, by the impugned judgment and order, come to the erroneous conclusion that the release of the petitioner on bail would defeat the interest of justice and rejected the prayer for



bail of the petitioner.

Learned Counsel for the petitioner relies upon Section 3 (i), (iv), (v) and (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”

Learned Counsel for the petitioner, referring to above mentioned provisions of law, 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 the best interest of the child. He further submits that the principle of family responsibility and principle of fresh start have also been recognized under the Act.

Learned Counsel for the petitioner 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.”

In reference to Section 12 of the Act, learned Counsel for the appellant submits that bail to a child in conflict with law is a rule and denial is exception.

Learned Counsel for the petitioner, in the aforesaid background, submits that the learned 1st Additional Sessions Judge -cum- Special Judge, Children Court, Gaya, has failed to consider the scheme of the Act and has committed material



irregularity in arriving at the conclusion that the petitioner might come in association of bad company and might involve himself in some other criminal offence. He further submits that the learned Court below has come to the aforesaid conclusion on the basis of the social background report, which has not been considered in its proper perspective and the impugned order has been passed mechanically without taking into consideration the fact that the family of the petitioner is entitled to be given one opportunity to take efforts to reform the petitioner. He further submits that the mother of the petitioner is ready to take responsibility and will file an affidavit that if one chance is given to the petitioner, she will try to keep him away from the bad company and will also try to make good changes in the behaviour of the petitioner.

On the other hand, learned Additional Public Prosecutor submits that from perusal of Section 12 of the Act, it appears that bail is a matter of right to a child in conflict with law and denial is exception and in view of the fact that mother is ready to give an undertaking to protect the welfare of her child, i.e. the petitioner, this Court may consider to pass appropriate order in the best interest of the child in conflict with law.

Having regard to the submissions made by the parties



and taking into consideration the materials available on record and the impugned order, I am of the considered opinion that there is possibility of reform in the petitioner inasmuch as the mother of the petitioner is ready to take proper care of the petitioner after his release on bail and there is no likelihood that the petitioner will fall in bad company. As such, the conclusion arrived at by learned 1st Additional Sessions Judge -cum- Special Judge, children Court, is not sustainable in the facts and circumstances of the case.

Accordingly, this application is allowed and the order, dated 30.06.2020, passed by learned 1st Additional Sessions Judge -cum- Special Judge, Children Court, Gaya, in Criminal Appeal (Juvenile) No. 36 of 2020, arising out of Kotwali Police Station Case No. 360 of 2019, is hereby set aside.

Let the petitioner, above named, 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 Misc. Case No. 02 of 2020, arising out of Kotwali Police Station Case No. 360 of 2019, subject to the following conditions:-

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



(ii) that the mother of the petitioner shall file an affidavit before the learned Juvenile Justice Board, Gaya, giving specific undertaking that after release of the petitioner on bail, she will take proper care of the petitioner and will not allow him to fall into bad company.

(Anil Kumar Sinha, J.)

Prabhakar Anand/-

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