

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.393 of 2020

Arising Out of PS. Case No.-401 Year-2019 Thana- GAYA KOTWALI District- Gaya

SAHIL KUMAR S/o 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, Advocate
For the Respondent/s : Mr. Anant Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

3 09-03-2021 Heard Mr. Manish Kumar No. 2, learned counsel for the revisionist- petitioner and Mr. Anant Kumar, learned counsel appearing for the State.

2. This Criminal Revision application has been filed against the judgment dated 30.06.2020 passed by learned Special Judge (Children Court), Gaya in Cr. Appeal (Juvenile) No.35 of 2020 (C.I.S.) as also against the order dated 20.03.2020 passed in Misc. No. 275 of 2019 in connection with Kotwali P.S. Case No. 401 of 2019 (NDPS No. 64 of 2019) registered for the offence under Sections 414, 420, 34 of the I.P.C., Section 20/12 of the N.D.P.S. Act and Section 11/13 of the Bihar Bangal Gambling Act by learned Juvenile Justice



Board, Gaya.

3. The allegation against the petitioner as per the First Information Report lodged on 02.09.2019 is that during the course of patrolling on a tip off the Police Officials raided the house of the petitioner and from the house of the petitioner 200 grams of “Ganja”, register relating to lottery and mobiles have been recovered.

4. Learned counsel for the petitioner submits that petitioner was declared juvenile by the Juvenile Justice Board, Gaya after coming to conclusion that the petitioner was minor at the time of the alleged occurrence and his age was assessed about 15 years 8 months 22 days. Learned counsel further submits that bail application of the petitioner was rejected by the Juvenile Justice Board, Gaya and against the said order the petitioner preferred appeal bearing Cr. Appeal (Juvenile) No. 35 of 2020 (C.I.S.) before the learned Special Judge (Children Court), Gaya who by the impugned judgment has arrived at erroneous conclusion that there is no element of reform in the appellant and if he is released on bail, he might again come in association of bad company and might be involved in other offences. Learned counsel relies upon Sections 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 upto 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 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 under the provisions of 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 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 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 appellant might fall in bad company again if he is released on bail and that grant of bail to the appellant will defeat the ends of justice. Learned counsel further submits that the petitioner is in custody since 03.09.2019.

8. On the other hand, learned counsel for the State submits that 200 grams of “Ganja” was recovered from the house of the petitioner and the offence committed by the petitioner is serious in nature and he may not be granted the privilege of bail.

9. This Court by order dated 30.01.2021 has called for social background report and social investigation report of the petitioner, which are on record. From perusal of the record and social investigation report it appears that the Probation Officer has given his opinion that there is possibility of improvement in the life style of the petitioner if some opportunity of employment is given to him. It further appears from the report of Probation Officer that neighbour of the child in conflict with law has informed that behaviour of the child is good and the environment in the vicinity where the appellant



resides is also conducive. It has further been mentioned in the report that the child has emotional connection with his mother also. It appears that the mother has given undertaking to look after the child and has sworn affidavit in the present Revision application. Learned counsel also submits that if one chance is given to the petitioner the mother would try to keep him away from bad company and would try to bring change in his behaviour.

10. Having regard to the submissions made by the parties and upon perusal of the impugned order and judgment and taking into consideration the social background report and social investigation report of the 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 appellant-petitioner would be against the interest of child in conflict with law and there is no element of reform in the appellant.

11. Accordingly, the judgment dated 30.06.2020 passed by learned Special Judge (Children Court), Gaya in Cr. Appeal (Juvenile) No. 35 of 2020 (C.I.S.) and order dated 20.03.2020 passed in Misc. Case No. 275 of 2019 in connection with Kotwali P.S. Case No. 401 of 2019 (NDPS No. 64 of 2019)



by learned Juvenile Justice Board, Gaya are set side and the revisionist – petitioner, above named, 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 Juvenile Justice Board, Gaya / court concerned in connection with Kotwali P.S. Case No. 401 of 2019 (NDPS No. 64 of 2019) subject to the following condition:-

(i) that one of the bailors shall

be the mother of the petitioner.”

12. Accordingly, this Criminal Revision application is disposed of.

(Anil Kumar Sinha, J)

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