

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.412 of 2020

Arising Out of PS. Case No.-133 Year-2018 Thana- RAJAOLI District- Nawada

RAKESH DAS @ RAKESH KUMAR S/o Ganauri Das R/o village- Chotha,
P.S.- Rajauli, District- nawada, under the guardianship of his father Ganauri
Das aged 45 years (Male), S/o Jagdis Das, R/o village- Chautha, P.S.- Rajauli,
District- Nawada

... .. Petitioner/s

Versus

The State of Bihar Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Sheo Kumar Prasad, Advocate
For the Respondent/s : Dr. Rabindra Kumar, A.P.P.

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

3 18-05-2021 Heard Mr. Sheo Kumar Prasad, learned counsel for

the petitioner and Dr. Rabindra Kumar, learned Additional

Public Prosecutor appearing for the State through video

conferencing.

2. This Criminal Revision application has been
preferred against the judgment and order dated 24.6.2020 passed
by learned 1st Additional District & Sessions Judge- cum-
Special Judge , Nawada, in Cr. Appeal No. 06 of 2020 arising
out of the order dated 05.03.2020 passed in GR/C-J.I.N No.
868/18-647/20 by learned Juvenile Justice Board, Nawada in
connection with Rajauli P.S. Case No. 133 of 2018 registered
for the offence punishable under Section 392 of the I.P.C. By the
impugned order and judgment the learned Special Judge,



Nawada has refused to release the revisionist – petitioner herein on bail and affirmed the order of learned Juvenile Justice Board.

3. The allegation against the petitioner as per the First Information Report lodged by the informant Hari Prasad Mahto is that four unknown persons surrounded the truck bearing registration No. JH09AA-8214 and after assaulting the truck driver, took away the truck along with them.

4. Learned counsel for the petitioner submits that the petitioner is not named in the First Information Report and his name has transpired on the basis of confessional statement of co-accused Birendra Kumar @ Prince and no looted article has been recovered from possession of the petitioner. Learned counsel further submits that the co-accused Birendra Kumar @ Prince has been granted bail by a co-ordinate Bench of this Court vide order dated 18.12.2019 passed in Cr. Misc. 46579 of 2019. Learned counsel next submits that the petitioner was declared juvenile by the Juvenile Justice Board at Nawada on 26.2.2020 and against the order passed by the Juvenile Justice Board, refusing the bail application, the petitioner, preferred an appeal bearing Criminal Appeal No. 06 of 2020 before the learned 1st Additional District & Sessions Judge cum Special Judge, Nawada, who by the impugned judgment and order has



rejected the bail application 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 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”

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 and father of the petitioner is ready to take care of his child i.e. the petitioner and he would try to keep him away from bad company and would also try to bring change in his behavior. As such, one chance may be given to the petitioner to reform himself.

7. Learned counsel in the aforesaid back ground 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 criminal



antecedent and has committed serious offence as such, release of petitioner on bail will amount to defeating the ends of justice and the petitioner may fall in bad company if he is released on bail.

9. 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 father is ready to take responsibility to reform his child, i.e. petitioner, this court may consider to pass appropriate order in the best interest of the child.

10. From perusal of the record it appears that petitioner has remained in custody since 26.02.2020.

11. Having regard to the submissions made by the parties, on perusal of the impugned order and judgment and taking into consideration the fact that father of the petitioner is ready to take responsibility to reform the child, this Court is inclined to grant one opportunity to the petitioner and is inclined to release him on bail.

12. Accordingly, the judgment and order dated 24.6.2020 and 05.03.2020 respectively passed by learned 1st Additional District and Sessions Judge cum Special Judge, Nawada and Juvenile Justice Board Nawada in Cr. Appeal No.



06 of 2020 as well as GR/C-J.I.N No. 868/18-647/20 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 Rajauli P.S. Case No. 133 of 2018 on the following condition:-

(i) that one of the bailors shall be the father of the petitioner who shall file an affidavit before the concerned court below stating therein that he will take proper care of the petitioner and will try to keep him away from the bad company and also try to bring change in the behaviour of the petitioner.

(Anil Kumar Sinha, J)

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