

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.374 of 2020

Arising Out of PS. Case No.-503 Year-2019 Thana- BARACHATTI District- Gaya

1. TARUNJAY KUMAR natural guardian his father Uttam Ram Resident of Village-Kala Pahad, Police Station-Tandwa, District-Aurangabad.
2. Munna Kumar his natural guardian his father Mahendra Ram Resident of Village-Kala Pahad Sagwa, Police Station-Tandwa, District-Aurangabad.

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Binod Kumar

For the Respondent/s : Mr. Sanjay Kumar Singh

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

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

This revision application has been filed against the judgment and order, dated 10.06.2020, passed by learned Special Judge, Children Court, Gaya, in Criminal Appeal (Juvenile) No. 30 of 2020, arising out of Barachatty Police Station Case No. 503 of 2019, registered for the offences punishable under Section 392 of the Indian Penal Code. By the impugned order, the learned Special Judge has dismissed the bail application of the petitioners.

The prosecution case, as per the First Information Report lodged on the basis of the fardbayan of Amar Kumar



Singh, is that while he, along with his friends, was returning from Ranchi in a scorpio vehicle, his vehicle got punctured, and while they were changing the wheel of the vehicle, three persons, armed with knives and pistol, came out of the nearby forest and abused the informant and snatched away mobile, trolley bag and other valuables.

Learned Counsel for the petitioners submits that the petitioners were declared juvenile by the learned Juvenile Justice Board, Gaya, after coming to the conclusion that the petitioners were minor at the time of alleged occurrence. He further submits that by order, dated 20.05.2020, passed in G. R. No. 1433 of 2019/Misc. Case No. 314 of 2019, the learned Juvenile Justice Board, Gaya, has refused to grant bail to the petitioners. He next submits that against the order, dated 20.05.2020, the petitioners preferred Criminal Appeal (Juvenile) No. 30 of 2020 for grant of bail, but, by the impugned order, the learned Special Judge, Children Court, Gaya, has rejected the prayer of the petitioners for bail on erroneous conclusion that allowing the appeal would defeat the ends of justice and would go against the interest of the children in conflict with law, i.e. the petitioners.

Learned Counsel for the petitioners 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 petitioners, 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 petitioners 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 petitioners submits that bail to a child in conflict with law is a rule and denial is exception.

Learned Counsel for the petitioners, in the aforesaid background, submits that the learned 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 petitioners have no proper guardianship and their



parents are negligent towards their proper care and attention. He further submits that the fathers of both the petitioners are ready to take responsibility of their respective child and shall also file an affidavit that they will take proper care for the welfare of the children and will not allow them to fall into bad company, if released on bail. He further submits that one opportunity may be given to the petitioners to reform themselves. He further submits that the learned Special Judge, Children Court, Gaya, has not taken into consideration the social background report in its proper perspective and mechanically relying on the social background report, has come to the erroneous conclusion that allowing the bail application of the petitioners would defeat the ends of justice and the purpose of reform. He further submits that the petitioners are in observation home since 27.10.2019.

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 fathers of both the petitioners have given undertaking to reform their children, i.e. the petitioners, 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, on perusal of the impugned order and taking into consideration the materials available on record, I am of the considered opinion that there is possibility of reform in the petitioners inasmuch as the fathers of the petitioners are ready to take proper care of the petitioners after their release on bail and there is no likelihood that the petitioners will fall into bad company. As such, the conclusion arrived at by learned Special Judge, Children Court, Gaya, is not sustainable in the facts and circumstances of the case.

Accordingly, this revision application is allowed and the order dated 10.06.2020, passed by learned Special Judge, Children Court, Gaya, in Criminal Appeal (Juvenile) No. 30 of 2020, arising out of Barachatty Police Station Case No. 503 of 2019, is hereby set aside.

Let the petitioners, above named, be released on bail on furnishing bail bonds of Rs. 10,000/- (ten thousand) each with two sureties of the like amount each to the satisfaction of learned Juvenile Justice Board, Gaya, in connection with G.R. No. 1433 of 2019/Misc. Case No. 314 of 2019, arising out of Barachatty Police Station Case No. 503 of 2019, subject to the following conditions:-



(i) that one of the bailors shall be the father of the respective petitioners;

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

(Anil Kumar Sinha, J.)

Prabhakar Anand/-

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