

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.415 of 2020

Arising Out of PS. Case No.-22 Year-2019 Thana- MAHILA PS District- Gaya

Deo Lal Kumar @ Deo Lal Yadav, aged about 15 years (Male)(Juvenile) Son of Sukhdeo Yadav, Resident of Village- Amkola Salaiya, P.S.- Mohanpur, District- Gaya under Guardianship of his father namely Sukhdeo Yadav, Son of Vodhan Yadaav, Resident of Village- Amkola Salaiya, P.S.-Mohanpur, District -Gaya.

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Shivendra Prasad
For the Respondent/s : Mr. Anant Kumar

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

3 08-03-2021 Heard Mr. Shivendra Prasad, learned counsel for the revisionist - petitioner and Mr. Anant Kumar, learned counsel for the State.

2. This Criminal Revision application has been filed against the judgment dated 05.03.2020 passed by Sri Birendra Kumar Mishra, learned Special Judge (Children Court), Gaya in Cr. Appeal (Juvenile) No. 06 of 2020 (CIS) as also against the order dated 03.12.2019 passed by learned Juvenile Justice Board, Gaya in POCSO Case No. 86 of 2019 and Misc. Case No. 264 of 2019 arising out of Mahila P.S. Case No. 22 of 2019 registered for the offence under section 341/ 342 / 323 / 354 / 376 (D) / 376 (DA) / 34 of the I.P.C. , Section 4 of the POCSO



Act and Section 3 (1) of the SC / ST (Prevention of Atrocities) Act.

3. The allegation against the petitioner as per the First Information Report is that the petitioner along with other accused persons has kidnapped the minor daughter of the informant and has committed gang rape.

4. Learned counsel for the petitioner submits that petitioner was declared juvenile by order dated 02.12.2019 by the Juvenile Justice Board, Gaya after coming to conclusion that the petitioner was minor at the time of the alleged occurrence and was aged about 14 years 4 months 29 days. Learned counsel next submits that against the order passed by Juvenile Justice Board, Gaya refusing bail, the petitioner preferred appeal bearing Cr. Appeal (Juvenile) No. 06 of 2020 (C.I.S.) before the learned Special Judge (Children Court), Gaya who by the impugned judgment arrived at the erroneous conclusion that release of petitioner on bail would defeat the ends of justice and further if bail is granted the petitioner may be subjected to psychological stress by criticism and shunning him by the community and the family members of the victim due to heinous crime committed by him. 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 since the petitioner has committed heinous crime there is possibility that he may be subjected to psychological stress by criticism and further grant of bail may defeat the ends of justice. Learned counsel for the petitioner submits that father of the petitioner has given undertaking and is ready and willing to take whole responsibility of the petitioner after his release on bail by this court.

8. On the other hand, learned counsel for the State submits that from perusal of the impugned order it is evident that the learned court below has already considered the nature of crime committed by the petitioner and the provisions of law and has rejected the bail application in the ends of justice. From perusal of the record it appears that the petitioner has remained in custody since 27.08.2019.

9. By order dated 30.01.2021 this Court had called for social background report and social investigation report of the petitioner, which are on record. From perusal of the record it appears the Probation Officer upon detailed enquiry has come to



the conclusion that child in conflict with law needs proper guidance and in other words one chance may be given to the child to reform himself.

10. Having regard to the submissions made by the parties and upon perusal of the impugned judgment and taking into consideration the social background report and social investigation report as well as the undertaking given by the father 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 petitioner will amount to defeating the ends of justice.

11. Accordingly, the judgment dated 05.03.2020 passed by learned Special Judge (Children Court), Gaya in Cr. Appeal No. 06 of 2020 and order dated 03.12.2019 passed in POCSO Case No. 86 of 2019 and Misc. Case No. 264 of 2019 arising out of Mahila P.S. Case No. 22 of 2019 are set aside 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 POCSO Case No. 86 of 2019 and Misc. No. 264 of 2019 arising out of Mahila P.S. Case No. 22 of 2019



subject to the following condition:-

*(i) that one of the bailors shall be
the father of the petitioner.”*

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

(Anil Kumar Sinha, J)

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