

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL REVISION No.398 of 2020

Arising Out of PS. Case No.-267 Year-2019 Thana- ITARHI District- Buxar

MUKESH GUPTA, son of Mahendra Prasad Gupta, Resident of Village Diliya Tola, P.S. Dinara, District Rohtas

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Y. C. Verma, Sr. Adv.
For the Respondent/s : Mr. Nand Kishore Prasad

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

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

This revision application has been filed against the judgment and order, dated 28.08.2020, passed by learned 1st Additional Sessions Judge -cum- Special Judge, Children Court, Buxar, in Criminal Appeal No. 27 of 2020, arising out of Itarhi Police Station Case No. 267 of 2019, registered for the offences punishable under Sections 302/201/34 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, Buxar, while confirming the order, dated 30.05.2020, passed, in JJB Case No. 533 of 2020, by learned



Juvenile Justice Board, Buxar, has dismissed the bail application of the petitioner.

The allegation, as per the First Information Report, is that on 03.12.2019, the informant, who is a police officer, got a telephonic information that one half burnt body of a lady was lying on the earth near a temple, proceeded towards the place of occurrence and after finding the dead body of a lady lying on the earth, having bullet mark in her head and one empty 8 MM cartridge was also found near the dead body, the present First Information Report has been lodged against unknown. The name of the petitioner transpired in course of investigation when the father of the petitioner has stated that the deceased, who is the own sister of the petitioner, was taken by the petitioner on a motorcycle to the place of occurrence, where the accused persons killed the deceased. It has also come in course of investigation that it is a case of honour killing.

Learned Senior Counsel for the petitioner submits that the petitioner was declared juvenile by the learned Juvenile Justice Board, Buxar, after coming to the conclusion that the appellant was minor at the time of alleged occurrence and was aged about 13 years and 04 months and 26 days. He further submits that by order, dated 30.05.2020, the learned Juvenile



Justice Board, Buxar, has rejected the prayer for bail of the petitioner and against the said order, the petitioner preferred Criminal Appeal No. 27 of 2020, before the learned 1st Additional Sessions Judge -cum- Special Judge, Children Court, Buxar, who, by the impugned judgment and order, arrived at the erroneous conclusion that the offence committed by the petitioner comes under the purview of heinous crime.

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

Learned Senior Counsel for the petitioner, in the aforesaid background, submits that the learned 1st Additional Sessions Judge -cum- Special Judge, Children Court, Buxar, has failed to consider the scheme of the Act and has committed material irregularity in arriving at the conclusion that the alleged offence comes under the purview of heinous crime and there is possibility that the petitioner may associate with the adult criminal(s).

Learned Senior Counsel for the petitioner, referring to the social background report discussed in the impugned order, submits that the petitioner has got no criminal antecedent and he is in custody since 11.12.2019 and the gravity of the offence is not one of the considerations for grant/refusal of bail under the Act and the welfare of the child is of paramount consideration.

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, 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 fact that the learned Court below has rejected the prayer for bail of the petitioner primarily on the ground that the alleged offence comes under the purview of heinous crime, I am of the considered opinion that there is possibility of reform in the appellant inasmuch as he has got no criminal antecedent. As such, the conclusion arrived at by learned 1st Additional Sessions Judge -cum- Special Judge, Children Court, Buxar, that the petitioner may fall into company of adult criminal(s), is not sustainable in the facts and circumstances of the case.

Accordingly, this application is allowed and the order dated 28.08.2020, passed by learned 1st Additional Sessions Judge -cum- Special Judge, Children Court, Buxar, in Criminal Appeal No. 27 of 2020, arising out of Itarhi Police Station Case No. 267 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, Buxar, in connection with Juvenile Justice Board Case No. 533 of 2020, arising out of Itarhi Police



Station Case No. 267 of 2019, subject to the following conditions:-

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

(ii) that the elder brother of the petitioner shall file an affidavit before the learned Juvenile Justice Board, Buxar, giving specific undertaking that after release of the petitioner on bail, he 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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