

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.407 of 2020

Arising Out of PS. Case No.-43 Year-2018 Thana- FORBESGANJ District- Araria

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RAJA BABU @ KARAN KUMAR RAJU @ KARN KUMAR RAJU @
RAJA BABU KARN KUMAR @ RAJU under the Guardianship of his
natural Guardian Father Binod Yadav @ Binod Kumar Yadav R/o Village-
Sahugarh Madhepura, P.S.- Madhepura, District- Madhepura.

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Pawan Kumar, Adv.

For the Respondent/s : Mr. Nawal Kishore Prasad, APP

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

4 21-06-2021 Heard Mr. Pawan Kumar, learned counsel for

revisionist/petitioner and Mr. Nawal Kishore Prasad, learned

APP for the State through video conferencing.

2. Instant Cr. Revision application has been filed
against the judgment and order dated 09.10.2020 passed in Cr.
Appeal No. 11/2020 by the learned 1st Additional Sessions
-cum-Special Judge, Araria along with order dated 03.09.2020
passed by Juvenile Justice Board, Araria in connection with
Forbesganj PS Case No. 43/2018 under Section 392 of the IPC
whereby and whereunder both the learned court below have
refused to release the revisionist/petitioner on bail.

3. The allegation against the revisionist/petitioner, as
per First Informant Report is that four accused persons riding on



two motorcycles intercepted the motorcycle of informant, assaulted him and on the gun point, the miscreants snatched cash of Rs. 1.5 Lacs and Rs. 92 Thousand from his friend, Mukesh Yadav. The name of the petitioner who is a juvenile transpired on the basis of confessional statement of a co-accused, namely, Bimal Paswan,

4. Learned counsel for the petitioner submits that petitioner was declared juvenile *vide* order passed by Juvenile Justice Board, Araria on 12.02.2020 after coming to the conclusion that the petitioner was minor at the time of alleged occurrence and was aged about 16 years, 09 months and 01 day. Learned counsel further submits that mother of the petitioner is ready to give an undertaking that she would take proper care of the petitioner in future and would also see that he does not repeat the offence. Learned counsel next submits that against order passed by Juvenile Justice Board, Araria refusing the bail application, petitioner preferred an appeal bearing Cr. Appeal No. 11/2020 before the learned court of 1st Additional Sessions-cum-Special Judge, Araria, who by impugned judgment arrived at an erroneous conclusion that petitioner has got criminal antecedents and committed murder of House Father of Purnea Shelter Home. It has further been observed by the learned court



below that release of the petitioner on bail will defeat the ends of justice.

5. Learned counsel has placed reliance upon Sections 3 (i) (iv) (v) and (xiv) of 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 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.

6. 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 in the Act.

7. Learned counsel further relies upon Section 12 of the Act which is 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 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 maybe, 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 fulfill 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.

8. In reference to Section 12 of the Act, learned counsel for the petitioner submits that bail to a child in conflict with law is a rule and denial is an exception.

9. Learned counsel for the petitioner, in the aforesaid backdrop, 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 the petitioner, if released on bail, will defeat the ends of justice. Learned counsel further submits that other co-accused, namely, Bimal Paswan and Arun Kumar Yadav @ Arun Yadav @ Arun Kr Yadav have been granted bail *vide* Cr. Misc. No. 39936/2018 and 43339/2019 respectively by Co-ordinate Benches of this Court.

10. However, this Court vide order dated 05.04.2021 had called for social background report as well as social investigation report which are kept on record and from perusal of the same, it would appear that the probationary officer/child welfare officer has opined that there is a possibility that petitioner may indulge in criminal activity if he is released on



bail and he needs proper care and protection.

11. 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 an exception and in view of the fact that mother of the petitioner has given an undertaking to reform her child, i.e., the petitioner, this Court may consider to release the petitioner on bail in the best interest of the child.

12. From perusal of the records, it appears that the petitioner has remained in custody since 04.01.2020

13. Having regard to the submissions made by the parties and taking into consideration the material on record and the fact that the learned lower court has come to the finding that petitioner has got criminal antecedents and is having criminal thought and he has committed murder of a House Father of Purnea Shelter Home, as such, release of the petitioner on bail would amount to defeating ends of justice and further there is likelihood to bring him into association of any known criminal or expose him to moral, physical or psychological danger, this Court finds that there is no substantive material before the learned court below to believe that the release of the petitioner would likely to bring him into association of any known



criminal and further there is no material to come to the conclusion that the release of the petitioner would expose him to moral, physical or psychological danger inasmuch, the learned court below did not give any cogent reason that in the event of grant of bail, the ends of justice would be defeated.

14. Accordingly, the impugned orders dated 09.10.2020 passed in Cr. Appeal No. 11/2020 by the learned 1st Additional Sessions-cum-Special Judge, Araria along with order dated 03.09.2020 passed by Juvenile Justice Board, Araria are not sustainable in the eyes of law and taking into consideration the schemes of the Act and the fact that the mother of the petitioner is ready to take responsibility of her child, the aforesaid impugned orders are, hereby, set aside and the revisionist/petitioner, RAJA BABU @ KARAN KUMAR RAJU @ KARN KUMAR RAJU @ RAJA BABU KARN KUMAR @ RAJU 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 learned Juvenile Justice Board, Araria in connection with Forbesganj PS Case No. 43/2018 (GR No. 184 of 2018), subject to the condition that mother of the petitioner shall file an undertaking by way of an affidavit before the learned court below stating



therein that she will take proper care of her child/ petitioner and will also facilitate in improving his behaviour in future.

15. With the aforesaid observation and direction, the instant application is allowed.

16. Needless to say that at the time of furnishing bail bonds all the parties shall follow the covid protocol of social/physical distancing and sporting masks.

(Anil Kumar Sinha, J)

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