

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.554 of 2021

Arising Out of PS. Case No.-167 Year-2020 Thana- BACHHWARA District- Begusarai

Nitish Kumar S/o Ram Pravesh Yadav R/o village- Shibutoll, P.S.-
Bachhwara, District- Begusarai under the guardianship of his brother
Mithlesh Kumar S/o Ram Pravesh Yadav

... .. Petitioner/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Rajesh Kumar
For the Respondent/s : Mr.A.P.P.

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL ORDER

2 27-09-2021 Heard learned counsel for the parties.

2. This criminal revision application has been filed challenging the legality and correctness of order dated 03.08.2021 passed in Cr.Appeal No. 26/2021 by learned 1st Additional Sessions Judge-cum-P.O., Children Court, Begusarai confirming the order dated 19.03.2021 passed by Principal Magistrate, J.J.Board, Begusarai in J.J.B. Case No. 32/2021 (arising out of Bachhwara P.S. Case No. 167/2020) whereby, the bail petition of petitioner was rejected.

3. As per the prosecution case, on 12.08.2020, the brother of the informant went to his *sasural*, but he did not return till late night. On the next day, the informant received an information that dead-body of someone was hanging on a tree



near *Santosh Chimni Bhathha*. On receipt of such information, the informant went there and saw that his brother was hanging on a tree with a *gamchha* in his neck. The informant suspected that wife of his brother, father-in-law, mother-in-law and 3-4 unknown persons have committed the murder of his brother.

4. It is submitted on behalf of the petitioner that petitioner is not named in the FIR. Name of the petitioner has come during course of investigation only on material that he was in contact with wife of informant's brother (deceased). It is further submitted that petitioner has been declared juvenile on 05.02.2021 by the Juvenile Justice Board and his age has been assessed as 15 years 08 months and 08 days. It is further submitted that the bail application of the petitioner (CICL) has been decided by the court below on the merit and nature & gravity of the offence, whereas, once petitioner has been declared juvenile, his case was required to be considered in the light of Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015 {hereinafter referred to as the 'Act'}. The family members of the petitioner are ready to keep the petitioner and will not allow him to go into the association of criminals. Petitioner has got clean antecedent and is in custody since 01.02.2021.



5. However, learned A.P.P. for the State opposed the revision application and submitted that this petitioner was also involved in the murder of brother of the informant and as such, the impugned orders are just and proper and do not require any interference by this Court.

6. While dealing with the case of juvenile (child in conflict with law), the Court should be guided by three fundamental principles, which are as follows:

- (a) principle of presumptions of innocence,***
- (b) principle of best interest of the child, and***
- (c) principle of safety of the child.***

7. When an application under Section 12 of the Act is filed before the Board for grant of bail, approach has to be different than the approach of the court while considering application for grant of bail under Section 437, 438 and 439 of the Cr.P.C.

8. It is settled law that a juvenile has to be released on bail unless the court has reasonable ground to believe that his release will bring him into association of some known criminals or will expose him to moral, physical or psychological danger or his release would defeat the ends of justice.

9. Rejection of application for grant of bail by making a detailed enquiry into the nature and gravity of allegation



would be completely contrary to statutory provision of Section 12 of the Act.

10. In this case, no reasonable ground has been mentioned by the court below for believing that the release of the petitioner (CICL) is likely to bring him into association of known criminals or any material has been brought on record by the prosecution for deciding whether any ground has been made out to reject the application, which has been mentioned under Section 12 of the Act. Once those grounds are not made out, only consequence is release of juvenile.

11. The Social Investigation Report suggests that petitioner (CICL) is normal and he is able to take decision and also economic condition of his family is at normal side. The report further suggests that petitioner (CICL) has been made accused in this case due to his contact with wife of the deceased.

12. Considering the aforesaid facts & circumstances as well as the position of law, as stated above, the order dated 03.08.2021 passed in Cr.Appeal No. 26/2021 by learned 1st Additional Sessions Judge -cum-P.O., Children Court, Begusarai and order dated 19.03.2021 passed by Principal Magistrate, J.J.Board, Begusarai in J.J.B. Case No. 32/2021 (arising out of Bachhwara P.S. Case No. 167/2020) are, hereby, set aside and



this criminal revision petition is allowed.

13. Accordingly, the above-named petitioner 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 learned Principal Magistrate, J.J.Board, Begusarai in J.J.B. Case No. 32/2021 (arising out of Bachhwara P.S. Case No. 167/2020), subject to condition that ***one of the bailor would be parent / family member of the petitioner, who would file an affidavit giving an undertaking to the effect that he will take care of good behaviour and child's well-being and will not allow him to go in the company of bad elements.***

(Prabhat Kumar Singh, J.)

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