

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.8 of 2021

Arising Out of PS. Case No.-63 Year-2020 Thana- BUNIYAD GANJ District- Gaya

SANDEEP KUMAR Son of Vijay Yadav Resident of Village - Belahi, P.S.-
Magadh Medical, Dist.- Gaya through its legal Guardian Vijay Yadav, Aged
about 42 years male Keshwaer Yadav, Resident of Village - Belahi Dubahal,
P.S.- Magadh Medical, Dist.- Gaya.

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Ashok Kumar, Advocate

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

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
CAV ORDER

4 16-04-2021 Heard Mr. Ashok Kumar, learned counsel for
revisionist/petitioner and Mr. Nawal Kishore Prasad, learned
APP for the State.

2. Instant Cr. Revision application has been filed
against the judgment and order dated 09.10.2020 passed in Cr.
Appeal (Juvenile) No. 45/2020 (CIS) by the learned Special
Judge (Children Court), Gaya confirming the order dated
19.06.2020 passed by Juvenile Justice Board, Gaya in
connection with Buniyadganj PS Case No. 63/2020 under
Section 302/34 of the IPC whereby the learned Juvenile Justice
Board, Gaya refused to release the revisionist/petitioner on bail.

3. The allegation against the revisionist/petitioner is
that the co-accused, Aditya Kumar, killed his brother and sister-



in-law (*Bhabhi*) and this petitioner was along with him during the occurrence, which he has confessed before the police.

4. Learned counsel for the petitioner submits that petitioner was produced before the Juvenile Justice Board, Gaya where the plea of juvenility was taken on behalf of petitioner and the Juvenile Board declared the petitioner juvenile on 30.05.2020. Learned counsel further submits that against order passed by Juvenile Justice Board, Gaya refusing the bail application, petitioner, being juvenile, prayed before the learned court of Special Judge (Children Court), Gaya, who by impugned judgment arrived at an erroneous conclusion that there is no element of reform in the petitioner and petitioner may come in association of bad company and may be involved in other similar nature of offence if he is released on bail. Learned counsel next submits that the learned court below has also committed material irregularity in arriving at a conclusion that release of the petitioner on bail will defeat the ends of justice inasmuch as the learned court below has not considered the social investigation report of the petitioner in correct legal perspective.

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. In the aforesaid background, learned counsel for the petitioner 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 and petitioner may fall in bad company and might be involved in other similar nature of offence.

10. However, this Court vide order dated 02.03.2021 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 petitioner is a student studying at Allahabad and had come to his home during the period of lockdown. It further appears that the co-accused Aditya Kumar is a close friend of the petitioner who pressurized the petitioner to accompany him to resolve a dispute with his brother and the said friend, Aditya Kumar committed murder of his brother and sister-in-law and the petitioner being his friend was standing during course of occurrence inasmuch as his friend, Aditya had put him under the threat of his life. It further appears from the



report that the petitioner is a bright student and due to lack of wisdom, he fell mistakenly in the bad company of roguish friend. The report also suggests that attitude of the petitioner towards his friend was normal and neighbour of the petitioner told the probationary officer/child welfare officer that behaviour of the petitioner was good.

11. In para-16 of this petition, the petitioner has stated that the father of the petitioner has given an undertaking that he will take care of his son and will keep control upon him and will not allow him to fall in the company of bad elements. From perusal of the record, it appears that petitioner has remained in custody since 04.05.2020.

12. 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 father of the petitioner has given an undertaking to reform his child, i.e., the petitioner, this Court may consider to release the petitioner on bail in the best interest of the child.

13. Having regard to the submissions made by the parties and taking into consideration the impugned judgment and order and social background report/ social investigation



report of the petitioner, I am of the considered view that the learned lower court has committed material irregularity in arriving at the conclusion that the release of the petitioner on bail will defeat the ends of justice and there is a possibility that the petitioner will fall in a bad company, if released on bail.

14. Accordingly, the judgment and order dated 09.10.2020 passed in Cr. Appeal (Juvenile) No. 45/2020 (CIS) by the learned Special Judge (Children Court), Gaya confirming the order dated 19.06.2020 passed by Juvenile Justice Board, Gaya, are set aside and the revisionist/petitioner, SANDEEP KUMAR 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, Gaya in connection with Buniyadganj PS Case No. 63/2020 (GR No. 1921 of 2020/Misc. 71 of 2020), subject to the condition that (1) one of the bailors shall be the father of the petitioner (2) father of the petitioner shall file an affidavit before the learned court below stating therein that he will not allow the petitioner to fall in a bad company after release of the petitioner on bail.

15. Needless to say that at the time of furnishing bail bonds all the parties shall follow the covid protocol of



social/physical distancing.

(Anil Kumar Sinha, J)

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