

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1432 of 2019

Arising Out of PS. Case No.-152 Year-2019 Thana- SIWAN MUFFASIL District- Siwan

ABHINAV KUMAR @ ABHINAV SINGH S/o Deepak Singh R/o Mohalla-Fattehpur, P.S.- Siwan (T), District- Siwan. At present village- Barhoga Yadutola Sirisiya, P.S.- Jamo Bazar, Distt. Siwan, under the guardianship of his maternal grandfather (Nana) Virendra Singh, S/o Late Sadhu Singh

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Mukesh Kant, Advocate
For the Respondent/s : Mr. J.N. Thakur

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

5 23-03-2021 Heard Mr. Mukesh Kant, learned counsel for the revisionist-petitioner and Mr. J.N. Thakur, learned counsel appearing for the State.

2. The present Criminal Revision application has been filed against the judgment dated 05.11.2019 passed by Shri Manoj Kumar Tiwari, learned 1st Additional District and Sessions Judge- cum - Special Judge, Siwan in Cr. Appeal No. 56 of 2019 arising out of the order dated 19.09.2019 passed by learned Principal Magistrate, Juvenile Justice Board, Siwan in G.R. No. 1349 of 2019 Siwan Muffasil (Mahadeva OP) P.S. Case No. 152 of 2019 registered for the offence under section 364 (A)/302/201/120(B) of the I.P.C. Juvenile Trial No. 120 of 2019. By the impugned judgment learned Special Judge, Siwan



has refused the release of the revisionist - petitioner on bail.

3. The allegation against the petitioner as per the First Information Report is that the son of the informant Rahul Kumar, aged about 13 years had gone to his relative's house for playing but he did not return till evening and upon search the informant came to know that Vicky Kumar @ Vikash Kumar had taken away Rahul Kumar on his motorcycle and in the night some unknown persons called the nephew of the informant on his mobile and demanded ransom of Rs. 50 Lakh and threatened to kill the victim. On the next morning the dead body of the victim boy was found in the field. The informant has raised suspicion that petitioner along with other accused persons have killed her son.

4. Learned counsel for the petitioner submits that petitioner was declared juvenile by order dated 21.05.2019 passed by learned Juvenile Justice Board, Siwan after coming to conclusion that petitioner was minor at the time of the alleged occurrence and was aged about 17 years 26 days. Learned counsel further submits that against the order passed by Juvenile Justice Board, Siwan refusing bail, the petitioner preferred appeal bearing Cr. Appeal No. 56 of 2019 before the learned 1st Additional District and Sessions Judge-cum-Special Judge,



Siwan who by the impugned judgment arrived at erroneous conclusion that release of petitioner on bail would defeat the ends of justice and will give wrong signal to the society. 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 hereinbelow:-

“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 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.”

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. Learned counsel further submits that petitioner has been dragged in this case on the basis of suspicion only and no material has come against the petitioner during the course of investigation. However, learned counsel next submits that the accused person having similar allegation has been granted bail by this court in Cr. Misc. No. 60192 of 2019 (Annexure – “2” to the petition).

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 release of petitioner on bail would



defeat the ends of justice and will give wrong signal to the society. Learned counsel further submit that from perusal of the record it appears that the petitioner has remained in custody since 05.04.2019.

8. On the other hand, learned counsel for the State submits that from perusal of Section 12 of the Act it is manifest that bail is a matter of right and denial is exception and in view of the fact that mother has given undertaking to reform her child i.e. petitioner, this Court may consider to release the petitioner on bail in the best interest of the child.

9. This Court by order dated 02.03.2021 had called for social background report and social investigation report of the petitioner, which are on record. From perusal of the report it appears that the Probation Officer upon detailed enquiry has come to conclusion that petitioner had developed friendship with some boys who used to play with him and has committed offence due to their company. It further appears from the report that the mother of the petitioner has assured that if one chance is given to the petitioner she would try to keep him away from bad company and would try to bring change in the petitioner. The Probation Officer while submitting his report before the Juvenile Justice Board, Siwan has also come to conclusion that



the petitioner is not having any criminal antecedent and decision in the best interest of the petitioner may be taken.

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 of the petitioner as well as the undertaking given by the mother of the petitioner, I am of the considered opinion that the learned court below has committed material irregularity in arriving at erroneous conclusion that grant of bail to the petitioner would defeat the ends of justice and will give wrong signal to the society.

11. Accordingly, the dated 05.11.2019 passed by Shri Manoj Kumar Tiwari, learned 1st Additional District and Sessions Judge -cum- Special Judge, Siwan in Cr. Appeal No. 56 of 2019 and the order dated 19.09.2019 passed by learned Principal Magistrate, Juvenile Justice Board, Siwan in G.R. No. 1349 of 2019 arising out of Siwan Muffasil (Mahadeva OP) P.S. Case No. 152 of 2019 Juvenile Trial No. 120 of 2019 are set side 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, Siwan / court concerned



in connection with G.R. No. 1349 of 2019, Siwan Muffasil
(Mahadeva OP) P.S. Case No. 152 of 2019 Juvenile Trial No.
120 of 2019 subject to the following condition:-

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

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

(Anil Kumar Sinha, J)

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