

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL REVISION No.45 of 2023

Arising Out of PS. Case No.-485 Year-2021 Thana- BUDDHACOLONY District- Patna

JAYESH MORRICE Son of Praveen Morrice R/o Flat No.- 103 Savi Mansion
Apartment, Kasturba Path, Near Jamuna Apartment, P.S. and P.O.- S.K. Puri,
District - Patna through his mother Swarnlata Kumari

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Saket Anand
For the Respondent/s : Mr. Bharat Bhushan

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

ORAL ORDER

5 18-09-2023 Heard learned Counsel for the petitioner and learned
Additional Public Prosecutor appearing for the State.

2. This revision application has been filed against the
judgment and order dated 15.12.2022 passed by learned 1st
Additional District and Sessions Judge-cum-Special Judge,
Child Court, Patna Sadar, in Criminal Appeal No. 104 of 2022.
By impugned order, the learned 1st Additional District and
Sessions Judge-cum-Special Judge, Child Court, Patna Sadar,
has affirmed the order, dated 25.04.2022, passed by the Juvenile
Justice Board, Patna, in Juvenile Justice Board No. 704 of 2021,



arising out of Buddha Colony Police Station Case No. 485 of 2021, registered for the offences punishable under Sections 302/34 of the Indian Penal Code.

3. The prosecution case, as per the First Information Report, is that on 16.12.2020 at about 01:30 PM, the petitioner, along with co-accused, stabbed the son of the informant by means of knife on his chest. At the time of occurrence, two friends of the deceased were present, who took him to the hospital, where he was declared dead. The contention of the deceased's father is that the occurrence had taken place due to enmity between the informant's son (deceased) and the petitioner over love affair.

4. Learned Counsel for the petitioner submits that the petitioner was declared juvenile by order, dated 25.04.2022, passed by the learned Juvenile Justice Board, Patna, after coming to the conclusion that the petitioner was minor at the time of alleged occurrence and was aged about 15 years, 10 months and 04 days. He next submits that by the impugned order, the learned 1st Additional District and Sessions Judge-cum-Special Judge, Child Court, Patna Sadar, has rejected the prayer of the petitioner for bail on erroneous conclusion that



there is a possibility that the petitioner, if released on bail, would fall into association with any known criminal(s) and/or grant of bail to the petitioner may cause moral, physical and psychological danger to him which would defeat the ends of justice. He next submits that learned 1st Additional District and Sessions Judge-cum-Special Judge, Child Court, Patna Sadar, did not consider the social investigation report in correct legal perspective. The petitioner is in custody since 17.12.2021.

5. Learned Counsel 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”

6. Learned Counsel, 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.

7. 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 exception.

8. Learned Counsel, in the aforesaid background, submits that the learned 1st Additional District and Sessions Judge-cum-Special Judge, Child Court, Patna Sadar, has failed to consider the scheme of the Act and has committed irregularity in arriving at the conclusion that the petitioner, if release on bail, may fall into association with known criminals and/or he may



expose to the moral, physical or psychological danger which would defeat the ends of justice.

9. Learned Counsel further submits that the mother of the petitioner is ready to take proper care of the petitioner after release on bail and shall not allow him to fall into bad company and would try to bring change in his behaviour, if required.

10. 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 and in view of the fact that mother has given an undertaking to reform her child, i.e. the petitioner, this Court may consider to pass appropriate order in the best interest of the child in conflict with law.

11. A Bench of this Court, in the case of **Lalu Kumar @ Lalbabu @ Lallu v. State of Bihar**, reported in **2019 (4) PLJR 833**, while interpreting Section 12 of the Act has laid down the principle that the Board while considering bail of a Juvenile is duty bound to follow the principle of 'best interest', 'repatriation' and 'restoration' of child. The gravity and nature of offence are immaterial for consideration of bail of a juvenile. As per Section 12 of the Act of 2015, an application for bail is not decided by reference to classification of offences as bailable



or non-bailable under the Criminal Procedure Code.

12. Having regard to the submissions made by the parties and on perusal of the impugned order, I am of the considered opinion that there is possibility of reform in the petitioner inasmuch as he has got no criminal antecedent and as per the Social Investigation Report, the behaviour of the petitioner was good, he is a student of Class XII and is willing to pursue higher education and the mother of the petitioner is ready to take proper care of the petitioner after his release on bail as such there is no likelihood that the petitioner will fall into association with any known criminal(s). As such, the conclusion arrived at by learned 1st Additional District and Sessions Judge-cum-Special Judge, Child Court, Patna Sadar, is not sustainable in the facts and circumstances of the case.

13. Accordingly, this revision application is allowed and the order dated 15.12.2022, passed by learned 1st Additional District and Sessions Judge-cum-Special Judge, Child Court, Patna Sadar, in Criminal Appeal No. 104 of 2022 and order, dated 25.04.2022, passed by Juvenile Justice Board, Patna, in Juvenile Justice Board No. 704 of 2021, is hereby set aside.

14. Let the petitioner, above named, be released on bail on furnishing bail bond of Rs. 10,000/- (ten thousand) each



with two sureties of the like amount to the satisfaction of learned Juvenile Justice Board, Patna, in connection with Juvenile Justice Board No. 704 of 2021, arising out of Buddha Colony Police Station Case No. 485 of 2021, subject to the following conditions:-

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

(ii) that the mother of the petitioner shall file an affidavit before the learned Juvenile Justice Board, Patna, giving specific undertaking that after release of the petitioner on bail, she will take proper care of the petitioner and will not allow him to fall into bad company.

(Anil Kumar Sinha, J)

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