

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.137 of 2023

Arising Out of PS. Case No.-50 Year-2022 Thana- BAJPATTI District- Sitamarhi

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BABUL ANSARI @ MD. BABUL ANSARI @ BABLU ANSARI Son of Late Samsul Haque @ Late Samsul Ansari Resident of Village- Mehsaul Laxminagar, Ward No.-1, Mehsaul Purvi, P.S.- Sitamarhi, District- Sitamarhi under the Guardianship of Madina Khatoon, aged about- 45 years, Gender- Female, Wife of Late Samsul Ansari @ Late Samsul Haque Ansari, R/O Village- Ward No.-1, Mehsaul Purvi, P.S.- Sitamarhi, District- Sitamarhi

... .. Petitioner/s

Versus

1. The State of Bihar Bihar
2. Rajiv Bhagat Son of Kishori Bhagat R/V- Belahiya ward no. 2, PS- Bajpatti, Dist- Sitamarhi

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Santosh Kumar, Advocate.
For the Respondent/s : Mr.Chandra Bhushan Prasad, APP

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

5 08-08-2023 Heard learned Counsel for the petitioner and learned Additional Public Prosecutor appearing for the State.

2. This Criminal Revision has been filed against the judgment and order dated 12.01.2023 passed by learned 1st Additional District & Sessions Judge cum Special Judge (Children Court), Sitamarhi, in Criminal Appeal No. 94 of 2022 by which the learned Additional Sessions Judge cum-Special Judge, (Children Court) Sitamarhi, has affirmed the order, dated 29.11.2022, passed by the Principal Magistrate, Juvenile Justice Board, Sitamarhi, in JJB No. 1791 of 2022 arising out of Bajpatti P.S. Case No. 50 of 2022 registered for the offences



punishable under Sections 302/34 of the Indian Penal Code and Section 27 of the Arms Act.

3. The allegation as per the First Information Report, is that on 4.3.2022 at about 6:00 PM the son of the informant had gone to see *Risauli Jhanda* fair and at about 6:50 the informant was informed by his cousin brother that his son was shot dead on the road and his dead body was lying smeared with blood.

4. Learned Counsel for the petitioner submits that the petitioner was declared juvenile by order dated 05.11.2022 passed by the learned Juvenile Justice Board, Sitamarhi, after coming to the conclusion that the petitioner was minor at the time of alleged occurrence and was aged about 15 years, 11 months and 24 days. He next submits that by the impugned order, the learned 1st Additional District & Sessions Judge cum-Special Judge, (Children Court) Sitamarhi, has rejected the prayer of the petitioner for bail on erroneous conclusion that most of the friends of the petitioner are elder than his age group and cause of occurrence is bad association and it may expose the petitioner to moral, physical and psychological danger which would defeat the ends of justice. He next submits that learned 1st Additional District & Sessions Judge cum-Special



Judge, (Children Court) Sitamarhi, did not consider the social investigation report in correct legal perspective. He next submits that the name of the petitioner has come on the basis of confessional statement of co-accused Md. Chand and the petitioner has falsely been implicated in this case due to village politics. The petitioner is in custody since 10.10.2022.

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 & Sessions Judge cum-Special Judge, (Children Court) Sitamarhi has failed to consider the scheme of the Act and has committed irregularity in arriving at the conclusion that the petitioner may fall into bad company, if released on bail and it would defeat the ends of justice.

9. Learned Counsel further submits that father of the petitioner is no more and his mother 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 judgment reported in **2019(4) PLJR 833 *Lalu Kumar @ Lalbabu @ Lallu Vs. State of Bihar*** 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 Cr. P.C.

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 and the mother of the petitioner is ready to take proper care of the petitioner after his release on bail and 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 & Sessions Judge cum-Special Judge, (Children Court) Sitamarhi, is not sustainable in the facts and circumstances of the case.

13. Accordingly, this Criminal Revision is allowed and the order dated 12.01.2023 passed in Criminal Appeal No. 94 of 2022 by learned 1st Additional District & Sessions Judge cum-Special Judge, (Children Court) Sitamarhi affirming the order dated 29.11.2022 passed by learned Principal Magistrate, Juvenile Justice Board Sitamarhi is hereby set aside.

14. Let the petitioner, above named, 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 Principal Magistrate, Juvenile Justice Board, Sitamarhi, in JJB No. 1791 of 2022 arising out of Bajpatti P. S. Case No. 50 of 2022, 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, Sitamarhi, 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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