

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.129 of 2023

Arising Out of PS. Case No.-67 Year-2022 Thana- SAHIYARA District- Sitamarhi

=====

X SON OF KAUSHAL KISHORE SINGH R/O VILL.- MAHANI MANDAL
TOLE VISHNU SINGH, P.S.- SUPPI, DISTT.- SITAMARHI UNDER THE
GUARDIANSHIP OF HIS MOTHER, RINKU DEVI, W/O KAUSHAL
KISHORE SINGH

... .. Petitioner/s

Versus

The State of Bihar BIHAR

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Alok Kumar Jha, Advocate.

For the Respondent/s : Mr. Nagendra Prasad, APP

=====

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

4 28-08-2023 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 19.01.2023 passed by learned P.O. Children Court-cum-Additional District & Sessions Judge-1st, Sitamarhi, in Criminal Appeal No. 02 of 2023. By impugned order, the learned P.O Children Court-cum-Additional District & Sessions Judge-1st, Sitamarhi, has affirmed the order, dated 8.12.2022, passed by learned Principal Magistrate, Juvenile Justice Board, Sitamarhi, in JJB Case No. 1884 of 2022 arising out of Sahiyara P.S. Case No. 67 of 2022 registered for the offence punishable under Section 302 of the Indian Penal Code and Section 27 of the Arms Act.



3. The allegation as per the First Information Report, is that father of the informant proceeded to Muzaffarpur for his treatment by Motorcycle. Having parked the said Motorcycle in rented house, he proceeded to Muzaffarpur for treatment by bus. After treatment, while he was returning home on the Motorcycle, in the way, some unknown persons shot him, as a result of which he sustained firearm injury. The informant's father was taken to hospital for treatment where he was declared dead.

4. Learned Counsel for the petitioner submits that the petitioner was declared juvenile by order dated 8.12.2022 passed by the learned Principal Magistrate, Juvenile Justice Board, Sitamarhi, after coming to the conclusion that the petitioner was minor at the time of alleged occurrence and was aged about 17 years, 8 months and 4 days. He next submits that by the impugned order, the P.O. Children Court-cum-Additional District & Sessions Judge-1st, Sitamarhi, has rejected the prayer of the petitioner for bail on erroneous conclusion that grant of bail would cause moral and psychological danger to the petitioner and will defeat the ends of justice. He next submits that learned P.O. Children Court-cum-Additional District & Sessions Judge-1st, Sitamarhi, did not consider the social



investigation report in correct legal perspective. The petitioner is in custody since 29.11.2022.

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 P.O. Children Court-cum-Additional District & Sessions Judge-1st, Sitamarhi, has failed to consider the scheme of the Act and has committed irregularity in arriving at the conclusion that grant of bail to the petitioner would expose him to moral and psychological danger and will defeat the ends of justice.

9. Learned Counsel further submits that father of the petitioner is ready to take proper care of the petitioner after release him 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 father has given an undertaking to reform his 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. This Court Vide order dated 31.07.2023 had called for social background report as well as social investigation report of the petitioner and in pursuance thereof, the report of learned Principal Probation Officer, Sitamarhi, dated 11.07.2022 is on record and from perusal of the same, it appears that learned Principal Probation Officer has recorded that no adverse or negative complaint was made against the petitioner and his



family members and the parents of the petitioner has informed that he lives in his home as a normal child.

13. Having regard to the submissions made by the parties and upon perusal of the social background report as well as social investigation report of Principal Probation Officer it appears that there is no adverse or negative complaint against the petitioner and his family members and the petitioner lives in his home as a normal child, I am of the considered opinion that there is possibility of reform in the petitioner and the father 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 P.O. Children Court-cum-Additional District & Sessions Judge-1st, Sitamarhi, that the petitioner may fall into bad company, is not sustainable in the facts and circumstances of the case.

14. Accordingly, this Criminal Revision is allowed and the order dated 8.12.2022 and 19.01.2023 respectively passed in Criminal Appeal (Juvenile) No. 02 of 2023 passed by learned P.O. Children Court-cum-Additional District & Sessions Judge-1st, Sitamarhi and Principal Magistrate, Juvenile Justice Board, Sitamarhi, in JJB Case No. 1884 of 2022 arising out of



Sahiyara P.S. Case No. 67 of 2022, are hereby set aside.

15. 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. 1884 of 2022 arising out of Sahiyara P.S. Case No. 67 of 2022, subject to the following conditions:-

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

(ii) that father 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, he will take proper care of the petitioner and will not allow him to fall into bad company.

(Anil Kumar Sinha, J)

S.Ali/-

U		T	
---	--	---	--

