

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.156 of 2023

Arising Out of PS. Case No.-326 Year-2020 Thana- PUPRI District- Sitamarhi

SAROJ KUMAR S/O HARI SHANKAR PRASAD @ HARI SHANKAR SAH Resident of village- Madhuwan Bazar, P.S.- Bajpatti District- Sitamarhi, under the guardianship of his father Hari Shankar Prasad @ Hari Shankar Sah Son of Late Janki Sah, Resident of Village- Madhuwan Bazar, P.S.- Bajpatti, District- Sitamarhi.

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Ashok Kumar Jha

Mr. Saurav Anand

For the Respondent/s : Mr.Jai Narain Thakur

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

3 14-09-2023 1. Heard Mr. Ashok Kumar Jha, learned counsel for the petitioner and Mr. Jai Narain Thakur, learned counsel for the respondent.

2. This Criminal Revision application has been filed against the order dated 17.11.2022 passed in Cr. Appeal No. 44 of 2022 by learned 1st Additional Sessions Judge cum Special Judge Children Court, Sitamarhi and also for setting aside the order dated 30.05.2022 passed by learned Juvenile Justice Board, Sitamarhi in J.J.B. Case No. 1458 of 2022 arising out of Pupri P.S. Case No. 326 of 2020 registered under Section 392



of the IPC

3. The case of the prosecution in brief is that the informant after realizing the dues amount from different customers of his employer while coming back through Bus No. BR06PA5418 on way at Maula Nagar Bridge, the rear side passenger on the point of pistol got the Bus stopped and entered into the Bus, snatched his bag and came down from the Bus and threatened him of elimination.

4. Learned counsel for the petitioner submits that the petitioner was declared juvenile by the learned Juvenile Justice Board, Sitamarhi coming to the conclusion that the petitioner was minor at the time of alleged occurrence and was aged about 17 years 07 month 28 days. Learned counsel further submits that against the order passed by Juvenile Justice Board, Sitamarhi refusing the bail application *vide* order dated 30/05/2022, the petitioner preferred appeal being Cr. Appeal No. 44 of 2022 before the learned 1st Additional Sessions Judge-cum- Special Judge Children Court, Sitamarhi who by the impugned judgment arrived at erroneous conclusion that the S.I.R. reveals that the juvenile / appellant left his study and most of the friends of the appellant are elder than his age group. It is clear that the appellant is a member of bad association and



the pending cases against him reflects existence of bad association. The appellant is also an accused in four other criminal cases viz. Bajpatti P.S. Case No. 34/2021; Bajpatti P.S. Case No. 39/2021; Bajpatti P.S. Case No. 42/2021 & Pupri P.S. Case No. 56/2021. The release of the appellant / juvenile will not be in his interest because his release is likely to bring him in association with known criminal and also expose him to moral, physical and psychological danger and defeat the ends of justice. Learned counsel next submits that neither the looted article / property nor any incriminating material has been recovered from the conscious possession of the petitioner and the petitioner has not been put on Test Identification Parade. He further submits that the petitioner is not named in the F.I.R. He also submits that the name of the petitioner has been disclosed by the *Sepoy* but nowhere in all cases the name of the *Sepoy* has been disclosed and subsequently confession of the petitioner has been recorded by the Police. He further submits that the petitioner has been enlarged on bail in Bajpatti P.S. Case No. 39 of 2021 *vide* Cr. Misc. No. 542 of 2022. The petitioner is in custody since 24-02-2021.

5. Learned counsel for the petitioner relies upon Section 3 (i), (iv), (v) & (xiv) of the Juvenile Justice (Care and



Protection of Children) Act, 2015 {hereinafter referred to as “the Act”} which is 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 under the Act.

7. 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.

8. 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 would bring him in association with bad elements of society.

9. 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 exception as such this court may consider to pass appropriate order in accordance with the provisions of the Act for release the petitioner on bail in the best interest of the child.

10. From perusal of the record it appears that petitioner has remained in custody since 24.02.2021.

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 the 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 taking into consideration the material on record, 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 as such there is no likelihood that the petitioner would fall into association with any known criminals. Further taking into consideration the materials on record as well as the period of incarceration of the petitioner and in the best interest of CICL, this Court is of the considered view that the impugned judgment and order passed by both the courts below are not sustainable in the eyes of law inasmuch as they are not in consonance with the aims and objectives of the Act.

13. Accordingly, the impugned judgment dated 17-11-2022 passed in Cr. Appeal No. 44 of 2022 passed by learned 1st Additional Sessions Judge -cum- Special Judge



Children Court, Sitamarhi and the order dated- 30.05.2022 passed in J.J.B. Case No. 1458 / 2022 by Juvenile Justice Board, Sitamarhi are 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 / court concerned in connection with J.J.B. Case No. 1458 of 2022 arising out of Pupri P.S. Case No. 326 of 2020 on the following conditions:-

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

(ii) that the 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)

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