

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.226 of 2023

Arising Out of PS. Case No.-123 Year-2021 Thana- TANKUPPA District- Gaya

KUNDAN KUMAR S/o Suresh Manjhi Resident of Darjiyachak, P.S.-
Tankuppa, District-Gaya, Bihar, Through his mother Kamla Devi, female,
aged about 53 years, W/o Suresh Manjhi, Resident of Village-Darjiyachak,
P.S.-Tankuppa, District-Gaya, Bihar (Bihar)

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Praveen Kumar

For the Respondent/s : Mr.Binod Kumar

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

3 03-08-2023 1. Heard Mr. Praveen Kumar, learned counsel for the
petitioner and learned A.P.P. for the State.

2. This Criminal Revision application has been filed
against the order dated 11.01.2023 passed Cr. Appeal Juvenile
No. 9 of 2022 by learned Special Judge (Children Court) Gaya
arising out of order dated 03/09/2022 passed in Misc. Case No.
259 / 2022 by Juvenile Justice Board, Gaya in relation to
Tankuppa PS Case No. 123 / 2021 dated 18/12/2021 registered
under Section 366(A) of the IPC later on Section 376(D) IPC
and Section 4/6 of POCSO Act have also been added whereby
and where under rejection of the bail application of child in
conflict with law by learned Juvenile Justice Board, Gaya has
been affirmed.



3. Prosecution case in brief is that on 14/02/2021 at about 7 P.M. the daughter of the informant had gone to attend call of nature in the field but she did not return. Thereafter, the informant with his family members went to the field to search her but could not find her daughter. In the next morning the informant inquired from her daughter's friend Kajal Kumari and Baby Kumari but they told that her daughter had mobile phone and she used to talk with one Chotu Kumar. When the informant went to house of Chotu Kumar and enquired about her daughter his family members could not give any satisfactory reply. Mobile No. 8002024254 of Chotu Kumar was switched off and his friend Rajesh Kumar on interrogation also did not disclose any thing. The name of petitioner has surfaced on the basis of statement of victim recorded under Section 164 Cr.P.C. in which she has stated that the petitioner allured her and took her to Bansa village where the petitioner sexually abused the victim and raped her along with his friends

4. Learned counsel for the petitioner submits that the petitioner was declared juvenile by the learned Juvenile Justice Board, Gaya after coming to the conclusion that petitioner was minor at the time of alleged occurrence and was aged about 13 years 07 months 10 days. Learned counsel further submits that



against the order passed by Juvenile Justice Board refusing the bail application the petitioner preferred an appeal being Cr. Appeal Juvenile No. 9 of 2022 before the learned Special Judge (Children Court) Gaya who by the impugned judgment and order arrived at erroneous conclusion that the manner of commission of offence indicates an evil and well planned design which indicates matured skill of an accused than that of an innocent child and his release would defeat the ends of justice. Learned Spl. Judge (Children Court) Gaya wrongly appreciated the social investigation report of the petitioner and came to conclusion that there is lack of proper guidance, there is lack of morality and peer group influence and parental negligence. The petitioner has bad company and he is actively involved in offence and as such the conduct of the CICL showed criminal proclivities and criminal psychology. The release of the petitioner at this stage would bring him in association with criminals and anti social elements of locality and also expose him to moral, physical and psychological danger. Learned counsel next submits that the petitioner has got no criminal antecedent. Learned counsel next submits that medical report does not support the allegation of rape and as per medical report the age of victim has been assessed in between 18-19 years.



There is land dispute between the parties. The petitioner is victim of love affair between the victim girl and her boy friend.

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. Learned counsel further relies upon Section 12 of the Act, which is quoted as follows:-

“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



subsection (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.”

8. 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.

9. 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 defeat the ends of justice.

10. 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



and 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.

11. From perusal of the record it appears that petitioner has remained in custody since 21-04-2022.

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 inasmuch as he has got no criminal antecedent 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 would fall in 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 aims and objectives of the Act.

13. In the result, I am of the opinion that the learned court below has committed material irregularity in arriving at the conclusion that grant of bail to the petitioner would amount



to defeating the ends of justice.

14. Accordingly, the judgment and order dated 11.01.2023 passed Cr. Appeal Juvenile No. 9 of 2022 by learned Special Judge (Children Court) Gaya arising out of order dated 03/09/2022 passed in Misc. Case No. 259 / 2022 by Juvenile Justice Board, Gaya in relation to Tankuppa PS Case No. 123 / 2021 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 Juvenile Justice Board, Gaya / court concerned in connection with Tankuppa PS Case No. 123 of 2021 on 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, Gaya giving specific undertaking that after release of the petitioner on bail, she would take proper care of the petitioner and will not allow him to fall into bad company.

praful/-

(Anil Kumar Sinha, J)

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