

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.244 of 2023

Arising Out of PS. Case No.-204 Year-2022 Thana- SANGRAMPUR District- Munger

RAHUL KUMAR SON OF LATE FANTOOSH MAHTO UNDER
GUARDIANSHIP AND NATURAL/LEGAL GUARDIAN OF HIS BHABHI
NAMELY VUDDHO DEVI, AGED ABOUT 31 YEARS, (FEMALE), WIFE
OF PANKAJ MAHTO, RESIDENT OF VILLAGE- MOKBIRA, P.S.-
KASIM BAZAR, DISTRICT- MUNGER

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Nawal Kishor Singh

For the Respondent/s : Mr. Choubey Jawahar

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

2 31-07-2023 Heard Mr. Nawal Kishore Singh, learned counsel
for revisionist/petitioner and Mr. Choubey Jawahar, learned APP
for the State.

2. The present Cr. Revision application has been filed against the judgment and order dated 13.02.2023 passed in Cr. Appeal No. 03/2023 by the learned 1st Additional Sessions Judge, Munger along with order dated 16.12.2022 passed by learned Juvenile Justice Board, Munger in connection with JJB No.204/2022 arising out of Sangrampur (Tetia Bumper) PS Case No. 204/2022 for the offence punishable under Sections 25(1-A), 25(1-AA), 25(1-b)a, 26(i) (ii), 35 of the Arms Act whereby and whereunder both the learned courts below have refused to release the revisionist/petitioner on bail.



3. The prosecution case in brief is that the police party on the basis of secret information raided the house of one Surendra Mandal and apprehended him including the petitioner along with one Sanjay Kumar. During course of search of the house of Surendra Mandal, the police recovered weapons and semi prepared weapons and lathe machine etc. On query, the said Surendra Mandal disclosed the name of one Mintu @ Rohan who offers him Rs. 50,000/- per month to make arrangement of raw material for preparing the weapons and after preparing the weapons, Surendra Singh gives the same to Mintu @ Rohan.

4. Learned counsel for the petitioner submits that the petitioner/revisionist has falsely been implicated in this case and he has not committed any offence as alleged. He next submits that the petitioner was brought to the place of occurrence as a labourer and he was not aware of the fact that there was a factory meant for making weapons. He next submits that he findings arrived at by the learned appellate courts for rejection of the bail application are based upon no material who by impugned judgment arrived at an erroneous conclusion that the release of the petitioner is likely to bring him into association of same criminals or expose him to moral, physical or



psychological danger or the petitioner's release would defeat the ends of justice. It has next been submitted that the learned court below has passed the impugned order mechanically and without application of judicial mind. He next submits that the petitioner is in judicial custody since 06.08.2022 and he was declared juvenile by the court of J.J. Board, Sheohar on 05.12.2022.

5. Learned counsel has placed reliance upon Sections 3 (i) (iv) (v) and (xiv) of Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as 'the Act') which are 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 in the Act.

7. Learned counsel further relies upon Section 12 of the Act which is 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 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 sub-section (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 maybe, 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 for the petitioner submits that bail to a child in conflict with law is a rule and denial is an exception.

9. Learned counsel for the petitioner, 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 the petitioner, if released on bail would defeat the ends of justice as the petitioner has committed a heinous crime.

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 an exception, this Court may consider to pass an appropriate order in accordance with the provisions of the Act.

11. From perusal of the records, it appears that petitioner is in custody since 06.08.2022.

12. Having regard to the submissions made by the parties and taking into consideration the material on record and the fact that there was no material before the learned appellate



court to come to the conclusion that the release of the petitioner is likely to bring him into association of same criminals or expose him to moral, physical or psychological danger or the petitioner's release would defeat the ends of justice and taking into consideration the period of incarceration of the petitioner, 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 consistent with the aims and objects of the Act.

13. Accordingly, judgment and order dated 13.02.2023 passed in Cr. Appeal No. 03/2023 by the learned 1st Additional Sessions Judge, Munger along with order dated 16.12.2022 passed by learned Juvenile Justice Board, Munger in connection with JJB No.204/2022 arising out of Sangrampur (Tetia Bumper) PS Case No. 204/2022 for the offence punishable under Sections 25(1-A), 25(1-AA), 25(1-b)a, 26(i) (ii), 35 of the Arms Act, are hereby, set aside and the revisionist/petitioner, **Rahul Kumar** is directed to 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, Munger in connection with JJB No.204/2022 arising out of Sangrampur (Tetia Bumper) PS Case



No. 204/2022, subject to the condition that one of the bailors will be the mother of the petitioner.

14. With the aforesaid observation and direction, the instant application stands allowed.

(Anil Kumar Sinha, J)

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