

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.387 of 2021

Arising Out of PS. Case No.-34 Year-2019 Thana- BHAGWANPUR District- Begusarai

BABLOO CHOUDHARY SON OF HEERALAL CHOUDHARY @
HIRALAL CHOUDHARY Resident of Village - Pakthaul, P.S.- Teghra,
Distt.- Begusarai.

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Pramod Kumar, Advocate.

For the Respondent/s : Mr. Arun Kumar Singh, A.P.P.

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

ORAL ORDER

6 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 20.02.2021 passed by learned Additional Sessions Judge-I-cum-P.O. Children Court, Begusarai, in Criminal Appeal No. 83 of 2020. By impugned order, the learned Additional Sessions Judge-I-cum-P.O. Children Court, Begusarai, has affirmed the order dated 11.11.2020, passed by learned Juvenile Justice Board, Begusarai in J.J.B. No. 142 of 2020 arising out of Bhagwanpur P.S. Case No. 34 of 2019 registered for the offences punishable under Sections 302 and 120-B of the Indian Penal Code.



3. The allegation as per the First Information Report, is that the informant had earlier lodged a case of kidnapping against the CICL and others and in order to withdraw the said case the CICL and accused Kumud Sahni pressurized the informant and threatened her and son (since deceased) to kill him. It has further been alleged that the son of the informant (deceased) got threat to kill from Mobile No. 7061808881 and on 1.3.2019 about 2:00 PM the informant got information that his son was shot dead by four accused persons.

4. Learned Counsel for the petitioner submits that the petitioner was declared juvenile by order dated 11.11.2020 passed by the learned Juvenile Justice Board, Begusarai, after coming to the conclusion that the petitioner was minor at the time of alleged occurrence and was aged about 17 years and two months. He further submits that by the impugned order, the learned Additional Sessions Judge-I-cum-P.O. Children Court, Begusarai, 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. He next submits that learned Additional



Sessions Judge-I-cum-P.O. Children Court, Begusarai, did not consider the social investigation report in correct legal perspective and the petitioner is in custody since 13.12.2019. The similarly situated co-accused person namely, Kumud Sahni has been granted bail by a co-ordinate Bench of this Court in Cr. Misc. 60920 of 2019.

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 Additional Sessions Judge-I-cum P.O. Children Court, Begusarai, 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 the 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 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 Additional Sessions Judge-I-cum-P.O. Children Court, Begusarai, that the petitioner may fall into bad company, is not sustainable in the facts and circumstances of the case. The petitioner is in custody since 13.12.2019.

13. Accordingly, this Criminal Revision is allowed and the order dated 11.11.2020 and 20.02.2021 respectively passed in Criminal Appeal No. 83 of 2020, G.R. No. 692 of 2019, JJB Case No. 142 of 2020 by learned Additional



Sessions Judge-I-cum-P.O. Children Court, Begusarai, and learned Juvenile Justice Board Begusarai 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 Juvenile Justice Board, Begusarai, in GR. No. 692 of 2019, JJB Case No. 142 of 2020, arising out of Bhagwanpur P.S. Case No. 34 of 2019, subject to 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, Begusarai, 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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