

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.263 of 2023

Arising Out of PS. Case No.-426 Year-2022 Thana- SIWAN CITY District- Siwan

SAJID ALI Son of Hasanain Ansari R/o Mohalla- Islamiya Nagar Siwan, PS-
Siwan Town, Dist- Siwan Under the guardianship of his mother sogra khatoon
wife of Hasanain Ansari

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Ajay Kumar Tiwary

For the Respondent/s : Mr.Shyam Kumar Singh

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

3 03-08-2023

1. Heard the parties.

2. This Criminal Revision application has been filed against the order dated 21-02-2023 passed by Sri Akhilesh Kumar Jha, learned Presiding Officer, Juvenile Court cum 1st Additional District and Sessions Judge- cum – Special Judge, Siwan in Cr. Appeal No. 02 of 2023 by which he has dismissed the criminal appeal and confirmed the order dated 17 / 11/ 2022 passed by learned Juvenile Justice Board, Siwan in G.R. No. 3053 of 2022, Siwan Town P.S. Case No. 426 / 2022, Juvenile Enquiry Case No. 493 / 2022 and also against the order dated 17.11.2022 passed by Juvenile Justice Board, Siwan in G.R. No. 3053 / 2022, Siwan Town PS Case No. 426 of 2022, Juvenile Enquiry Case No. 493 of 2022 who has refused to



release the petitioner on bail in connection with GR No. 3053 of 2022, Siwan Town PS Case No. 426 of 2022 registered for the offence under Section 365 of the IPC and later on Sections 302 , 201 / 34 of the IPC were also added in Juvenile Enquiry Case No. 493 of 2022.

3. As per the prosecution story the informant's son Sahil Kumar, who was working in the Electricity Department, Siwan in the Call Centre on 16/07/2022 received a call on his mobile number no. 8448938688 and was asked to reach Siswan Dhala, Siwan whereupon his son went there but his mobile was switched off since 09:00 O'clock night and his son was traceless. The informant suspected that some mishappening occurred with his son.

4. Learned counsel for the petitioner submits that the petitioner was declared juvenile by the learned Juvenile Justice Board, Siwan after coming to the conclusion that the petitioner was minor at the time of alleged occurrence and was aged about 15 years 10 months 15 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 No. 02 of 2023 before the learned Presiding Officer, Juvenile Court cum 1st Additional District & Sessions Judge



cum Spl. Judge, Siwan who by the impugned judgment and order arrived at erroneous conclusion that social investigation report of the petitioner reveals that the petitioner is an undisciplined child of violent nature and since his father resides abroad there is no control of the family upon the petitioner. The petitioner in association of his peer group has become a drug addict and is leading towards crime. The petitioner has not yet completed 18 years of age and there is every likelihood that his release 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 and to defeat the ends of justice. Learned counsel further submits that there is no eye witness of the alleged occurrence and even the informant is not an eye witness of the alleged occurrence. He next submits that similarly situated co-accused, who are juvenile, namely Arbaj Alam and Md. Kayum have been released on bail by the Juvenile Justice Board, Siwan. He next submits that the petitioner has got no criminal antecedent.

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 fulfil 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 bring him in association with bad elements of society.



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 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 29/07/2022.

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 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. 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 21.02.2023 & 17/11/2022 respectively passed in Cr. Appeal No. 02 of 2023 and Juvenile Enquiry Case No. 493 of 2022 by learned Presiding Officer, Juvenile Court cum 1st Additional District and Sessions Judge- cum- Special Judge, Siwan and Juvenile Justice Board, Siwan respectively 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, Siwan / court concerned in connection with G.R. No. 3053 of 2022, Siwan Town PS Case No. 426 of 2022, Juvenile Enquiry Case No. 493 / 2022 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, Siwan giving specific undertaking that after release of the petitioner on bail, she 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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