

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.253 of 2023

Arising Out of PS. Case No.-35 Year-2022 Thana- PIPRIYA District- Lakhisarai

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DILKHUSH KUMAR S/O RAJNITI YADAV @ RAJNETI YADAV Resident of Village- Murwariya, P.S.- Pipariya, Distirct- Lakhisarai, through his father and natural guardian Rajniti @ Rajneti Yadav (age 57 years, Gendre- Male), Son of Jagdish Yadav, Resident of Village- Murwariya, P.S.- Pipariya, District- Lakhisarai.

... .. Petitioner/s

Versus

1. The State of Bihar
2. COMPANY MODI S/O BINO MODI Resident of Village- Murwariya, P.S.- Pipariya, Distirct- Lakhisarai

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Man Mohan Kumar
For the Respondent/s : Mr.Akhileshwar Dayal

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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 14.12.2022 passed by in Cr. Appeal No. 38 of 2022 by learned Additional District Judge 1st cum Special Judge, SC/ ST, Lakhisarai and the order dated 16.08.2022 passed by Juvenile Justice Board, Lakhisarai in Pipariya PS Case No. 35 of 2022 registered under Section 302 of the IPC.

3. Prosecution story in short is that on 22.05.2022 at 10.00 AM the informant's son namely Gulshan Kumar was murdered by unknown person in the village Murwariya with sharp cutting weapon and it is further alleged that a golden



chakti of Bajrangbali was not present in his neck.

4. Learned counsel for the petitioner submits that the petitioner was declared juvenile by the learned Juvenile Justice Board, Lakhisarai after coming to the conclusion that the petitioner was minor at the time of alleged occurrence and was aged about 14 years. 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. 38 of 2022 before the learned Addl. District and Sessions Judge Ist cum Special Judge, SC / ST , Lakhisarai who by the impugned judgment and order arrived at erroneous conclusion that social investigation report of the petitioner reveals that his friends are from the same background and of the same age and they are from criminal background and if he is released on bail in all likelihood he would end up in the association of gang of criminals. Further he is having good relationship with his friends who happens to be criminals. The learned appellate court further came to conclusion that the petitioner has committed gruesome crime of murder and he is in his teenage and having friends of criminal background and there is all likelihood that he will be in association with those criminals if released on bail. 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. The appellate court opined that it would be better that the petitioner remains in child care home for his good future.

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 A.P.P. 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 27/05/2022.

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 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. In the result, I am of the opinion that the learned courts below have 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 14/12/2022 and 16-08-2022 respectively passed in Cr. Appeal No. 38 of 2022 and GR No. 963A / 2022 arising out of Pipariya PS Case No. 35 of 2022 by learned Addl. District Judge 1st cum Special Judge SC/ST Lakhisarai and Juvenile Justice Board, Lakhisarai 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, Lakhisarai / court concerned in connection with GR No. 963A / 2022 , Pipariya PS Case No. 35 of 2022 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, Lakhisarai 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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