

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.285 of 2023

Arising Out of PS. Case No.-701 Year-2021 Thana- GAYA MUFASIL District- Gaya

JASPAL KUMAR SON OF JAIRAM CHAUDHARY VILLAGE-
SURAJPUR P.S ATRI DISTRICT GAYA

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Raj Dular Sah

For the Respondent/s : Mr.Ram Sevak Choudhary

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 / judgment dated 02-03-2023 passed in Juvenile Appeal No. 01 / 2023 by the court of learned Special Judge (Children Court), Gaya and for setting aside the same whereby and where under the prayer for regular bail of the petitioner has been rejected and the said Juvenile Appeal No. 01 / 2023 in turn has been dismissed. Further for setting aside the order / Judgment dated 04.01.2023 passed in Muffasil PS Case No. 701 / 2021 registered under Section 363 / 366 (A) , G.R. No. 12 / 2022 , Misc. 452 / 2022 by J.J.B., Gaya and further for grant of regular bail to the petitioner in this connection.

3. As per the prosecution story the informant's sister Neelam Kumari, aged about 16 years old, on 26-12-2021 had



gone to purchase vegetables but did not return whereupon the informant along with his parents began to search her sister and during course thereof he got to know that the petitioner enticed his sister with intention to marry and took her away to Ludhiyana.

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 the petitioner was minor at the time of alleged occurrence and was aged about 16 years 06 months 08 days. Learned counsel further submits that against the order passed by Juvenile Justice Board, Gaya refusing the bail application, the petitioner preferred an appeal being Juvenile Appeal No. 1 / 2023 before the learned Special Judge (Children Court), Gaya who by the impugned judgment and order arrived at erroneous conclusion that social investigation report of the petitioner reveals that there was love affair between the CICL and victim and she was unhappy with the settlement of her marriage and due to that she had gone with the CICL to Ludhiyana. The occurrence took place with intention to marry the victim and therefore kidnapping. There is lack of proper guidance as such the conduct of the CICL shows criminal proclivities and criminal psychology and if he is



released from the protective custody there is likelihood of his going back in the same environment. 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 defeat the ends of justice. Learned counsel for the petitioner submits that petitioner is a student of Class -X. 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 10.10.2022.

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 02-03-2023 and 04-01-2023 respectively passed in Juvenile Appeal No. 1 / 2023 and Gr. No. 12 / 2022, Misc. 452 / 2022 Muffassil PS Case No. 701 / 2021 by learned Special Judge (Children Court) Gaya and Juvenile Justice Board, Gaya 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 Gr. No. 12 / 2022, Misc. 452 / 2022, Mufassil PS Case No. 701 / 2021 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, Gaya 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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