

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.294 of 2023

Arising Out of PS. Case No.-29 Year-2022 Thana- BARAUNI District- Begusarai

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BIPIN KUMAR @ BIPIN KUMAR MAHATO @ DHAICHA SON OF
ASHOK MAHATO @ ASHOK NISAD RESIDENT OF VILLAGE -
SIMARIA GHAT, BIND TOLI, POLICE STATION - BARAUNI
(CHAKIYA), DISTRICT - BEGUSARAI UNDER GUARDIANSHIP OF
HIS FATHER NAMELY ASHOK MAHATO @ ASHOK NISAD S/O LATE
KALESHWAR NISAD, R/O SIMARIA GHAT, BIND TOLI, P.S- BARAUNI
(CHAKIYA), DISTT.- BEGUSARAI.

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Prerna Anand, Advocate.
For the Respondent/s : Mr. Zeyaul Hoda, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

5 12-09-2023 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 31.01.2023 passed by learned 1st
Additional Sessions Judge cum Special Judge, Children Court,
Begusarai, in Criminal Appeal No. 66 of 2022. By impugned
order, the learned 1st Additional Sessions Judge cum Special
Judge, Children Court, Begusarai, has affirmed the order, dated
7.7.2022, passed by learned Principal Magistrate, Juvenile
Justice Board, Begusarai, in JJB Case No. 56 of 2022 arising out
of Barauni P.S. Case No. 29 of 2022 registered for the offences
punishable under Sections 399, 402 of the Indian Penal Code,



Sections 25(1-b)A, 26 and 35 of the Arms Act.

3. The allegation as per the First Information Report, is that the Police on getting secret information that some miscreants were planning to commit dacoity in the cowshed situated near the house of Yogi Mahto @ Chhotu, proceeded there and after seeing the Police Party all six accused persons including petitioner started fleeing away but were apprehended by the Police. On search, the Police recovered one loaded country made pistol from possession of the petitioner.

4. Learned Counsel for the petitioner submits that the petitioner was declared juvenile by order dated 26.4.2022 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 08 months and 09 days. He next submits that by the impugned order, the learned 1st Additional Sessions Judge cum Special Judge, 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 1st Additional Sessions Judge cum Special Judge, Children Court, Begusarai, did not consider the social investigation report in correct legal perspective and the



petitioner is in custody since 11.01.2022. He also submits that the petitioner has already been remained in observation home/place on safety for more than one year eight months, one more chance may be given to the family and parents of the petitioner to make efforts for reform in the behaviour of the petitioner.

5. This Court vide order dated 8.8.2023 had called for social background report as well as social investigation report and in pursuance thereof, the report of learned Probation Officer, Begusarai, dated 26.3.2022 is on record and from perusal of the same, it appears that the economic condition of the family of the petitioner is good and parent maintains discipline in the home. As such, there is no difficulty in rehabilitation of the petitioner under the care of her mother.

6. 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”*

7. 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.

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 exception.

9. Learned Counsel, in the aforesaid background, submits that the learned 1st Additional Sessions Judge cum Special Judge, Children Court, Begusarai, has failed to consider



the scheme of the Act and has committed irregularity in arriving at the conclusion that the grant of bail to the petitioner would expose him to moral and psychological danger and will defeat the ends of justice.

10. Learned Counsel further submits that the mother of the petitioner is ready to take proper care of the petitioner after release on bail and shall not allow him to fall into bad company and would try to bring change in his behaviour, if required.

11. 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 mother 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.

12. 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.

13. 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, the petitioner is in observation home for more than one year and eight months 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 1st Additional Sessions Judge cum Special Judge, Children Court, Begusarai, is not sustainable in the facts and circumstances of the case.

14. Accordingly, this Criminal Revision is allowed and the order dated 31.01.2023 and 7.7.2022 respectively passed in Criminal Appeal No. 66 of 2022 by learned 1st Additional Sessions Judge cum Special Judge, Children Court, Begusarai and learned Principal Magistrate, Juvenile Justice Board, Begusarai, in JJB Case No. 56 of 2022 arising out of Barauni P.S. Case No. 29 of 2022 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 Principal Magistrate, Juvenile Justice Board, Begusarai, in JJB Case No. 56 of 2022, arising out of Barauni P. S. Case No. 29 of 2022, subject to 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, Begusarai, 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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