

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.302 of 2023

Arising Out of PS. Case No.-8 Year-2021 Thana- BHARGAMA District- Araria

ABHIMANYU KUMAR Son of Jay Prakash Sah R/o Naya Bhargama, PS-
Bhargana, Dist- Araria

... .. Petitioner/s

Versus

1. The State of Bihar
2. Hira Devi Wife of Late Jay Kumar Sah R/o Naya Bhargama, ward no. 10,
PS- Bhargama, Dist- Araria

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Shivpujan Sahay
For the Respondent/s : Mr.Nirmala Kumari

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 03.08.2022 passed by learned JJB, Araria in connection with SGR No. 130 / 2021, Bhargama PS Case No. 08 / 2021, JJB No. 110 / 2021 as well as the order dated 31.01.2023 passed by learned Sessions Judge, Araria in Cr. Appeal No. 17 / 2022 arising out of Bhargama PS Case No. 08 / 2021 corresponding to SGR No. 130 / 2021 & J.J.B. No. 110 / 2021 registered for the offences punishable under Section 302/34 of the IPC whereby and where under the petitioner / revisionist prayer for regular bail has been rejected. Further prayer is to grant / enlarge him on regular bail.

3. As per the prosecution story the husband of the informant (deceased) was assaulted by the petitioner by means



of *lathi* and other accused persons also assaulted her husband with bamboo, part of the spade, knife etc. and subsequently he was fired upon by the F.I.R. named accused persons as a result of which her husband died.

4. Learned counsel for the petitioner submits that the petitioner was declared juvenile by learned Juvenile Justice Board, Araria after coming to the conclusion that the petitioner was minor at the time of alleged occurrence and was aged about 16 years 9 months 7 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. 17 of 2022 before the learned Sessions Judge, Araria who by the impugned judgment and order arrived at erroneous conclusion that social investigation report of the petitioner shows that release of the appellant would likely bring him into the association with known criminal and will expose the appellant-petitioner to moral, physical and psychological danger and considering the interest and safety of the appellant as paramount the learned appellate court rejected the prayer for bail. Learned counsel next submits that the petitioner has clean antecedent and he surrendered himself on 19/02/2021. Learned counsel next submits that petitioner is a student of Class-IX.



Learned counsel further submits that both the parties are at litigating terms and the fact of the matter is that death of the husband of the informant occurred due to an accident.

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 19-02-2021.



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 cousin brother 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 expose him to moral, physical and psychological danger.

14. Accordingly, the judgment and order dated 03.08.2022 and 31.01.2023 respectively passed in J.J.B. Case No. 110 / 2021, SGR No. 130 / 2021, Bhargama P.S. Case No. 08 / 2021 and Cr. Appeal No. 17 / 2022 by learned Juvenile



Justice Board, Araria and learned Sessions Judge, Araria 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, Araria / court concerned in connection with Bhargama PS Case No. 08/ 2021 corresponding to SGR No. 130 / 2021 & JJB No. 110 / 2021 on the following conditions:-

(i) that one of the bailors shall be the cousin brother of the petitioner.

(ii) that the cousin brother of the petitioner shall file an affidavit before the learned Juvenile Justice Board, Araria 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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