

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.382 of 2023

Arising Out of PS. Case No.-318 Year-2021 Thana- SURSAND District- Sitamarhi

SACHIN KUMAR @ JHALU son of Ravindra Sah @ Ravindra Mahto
Village- Sursand Ashok Chowk Ward no-14, Ps- Sursand Dist- Sitamarhi
... .. Petitioner/s

Versus

The State of Bihar
... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Sanjay Kumar Mishra

For the Respondent/s : Mr. Chandra Bhushan Prasad

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

3 03-08-2023 Heard learned Counsel for the petitioner and learned
Additional Public Prosecutor appearing for the State.

2. This revision application has been filed against the judgment and order dated 02.07.2022 passed by learned 1st Additional District and Sessions Judge-cum-Special Judge, Children's Court, Sitamarhi, in Criminal Appeal No. 30 of 2022. By impugned order, the learned 1st Additional District and Sessions Judge-cum-Special Judge, Children's Court, Sitamarhi, has affirmed the order, dated 11.05.2022, passed by the Juvenile Justice Board, Sitamarhi, in Juvenile Justice Board No. 1401 of 2022, arising out of Sursand Police Station Case No. 318 of 2021, registered for the offences punishable under Section 414 of the Indian Penal Code and Section 30 of the Bihar Prohibition & Excise (Amendment) Act, 2018.

3. The prosecution case, as per the First Information Report, is that, on 10.07.2021, the police got secret information,



during patrolling, that the petitioner along with other accused persons have kept illicit Nepali liquor in a hut near the house of co-accused Ashok Kumar. Upon seeing police party, all accused succeeded in fleeing away and on search, total 525.3 liters of illicit Nepali liquor was recovered.

4. Learned Counsel for the petitioner submits that the petitioner was declared juvenile by order, dated 07.05.2022, passed by the learned Juvenile Justice Board, Sitamarhi, after coming to the conclusion that the petitioner was minor at the time of alleged occurrence and was aged about 16 years, 07 months and 22 days. He next submits that by the impugned order, the learned 1st Additional District and Sessions Judge-cum-Special Judge, Children's Court, Sitamarhi, has rejected the prayer of the petitioner for bail on erroneous conclusion that there is a possibility that the petitioner, if released on bail, would fall into bad company or would fall into association with any known criminal(s) and/or grant of bail to the petitioner may cause moral, physical and psychological danger to him which would defeat the ends of justice. He next submits that learned 1st Additional District and Sessions Judge-cum-Special Judge, Children's Court, Sitamarhi, did not consider the social investigation report in correct legal perspective. The petitioner is



in custody since 10.07.2021.

5. 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”

6. 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.

7. Learned Counsel for the petitioner further relied 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 fulfill 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 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 District and Sessions Judge-cum-Special Judge, Children's Court, Sitamarhi, has failed to consider the scheme of the Act and has committed irregularity in arriving at the conclusion that the petitioner, if release on bail, may fall into bad company and/or he may expose to the moral, physical or psychological danger which would defeat the ends of justice.

10. Learned Counsel further submits that the elder brother 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 elder brother has given an undertaking to reform the petitioner, i.e. the petitioner, this Court may consider to pass appropriate order in the best interest of the child in conflict with law.

12. 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 inasmuch as he has got no criminal antecedent and the elder 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 will fall into association with any known criminal(s) and/or he may expose to the moral, physical or psychological danger. As such, the conclusion arrived at by learned 1st Additional District and Sessions Judge-cum-Special Judge, Children's Court, Sitamarhi, that the petitioner may fall into bad company and/or he may expose to the moral, physical or psychological danger, is not sustainable in the facts and circumstances of the case.

13. Accordingly, this revision application is allowed and the order dated 02.07.2022, passed by learned 1st Additional District and Sessions Judge-cum-Special Judge, Children's Court, Sitamarhi, in Criminal Appeal No. 30 of 2022 and order, dated 11.05.2022, passed by the Juvenile Justice Board, Sitamarhi in Juvenile Justice Board Case No. 1401 of 2022, is hereby set aside.

14. Let the petitioner, above named, be released on bail on furnishing bail bond of Rs. 10,000/- (ten thousand) each with two sureties of the like amount each to the satisfaction of learned Juvenile Justice Board, Sitamarhi, in connection with



juvenile Justice Board No. 1401 of 2022, arising out of Sursand Police Station Case No. 318 of 2021, subject to the following conditions:-

(i) that one of the bailors shall be the elder brother of the petitioner;

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