

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.383 of 2023**

Arising Out of PS. Case No.-334 Year-2021 Thana- SURSAND District- Sitamarhi

SACHIN KUMAR @ JHALU Son of Ravindra Sah @ Ravindra Mahto
Resident of village - Sursand, Ashok Chowk, ward no. 14, P.S. - Sursand,
Distt. - 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**

5 19-09-2023 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 05.12.2022, passed by learned 1st Additional Sessions Judge -cum- Presiding Officer, Children Court, Sitamarhi, in Criminal Appeal No. 43 of 2022. By the impugned order, the learned 1st Additional Sessions Judge -cum- Presiding Officer, Children Court, Sitamarhi, has affirmed the order, dated 29.06.2022, passed by the Juvenile Justice Board, Sitamarhi, in J. J. B. Case No. 1408 of 2022, arising out of Sursand Police Station Case No. 334 of 2021, registered for the offences punishable under Section 30 (a) of the Bihar Prohibition and Excise Act, 2016.



3. The prosecution case, as per the First Information Report, is that the police, on the basis of secret information, intercepted one maruti car and recovered a total quantity of 351.9 litres of illicit liquor from the said vehicle. The police also arrested the driver of the said vehicle, who disclosed that the petitioner, along with other co-accused persons used to bring illicit liquor and handed over the same to the driver for making delivery of the illicit liquor from the vehicle in question.

4. Learned Counsel for the petitioner submits that the petitioner was declared juvenile by the learned Juvenile Justice Board, Sitamarhi, after coming to the conclusion that the petitioner was minor at the time of alleged occurrence. He next submits that by the impugned order, the learned 1st Additional Sessions Judge -cum- Presiding Officer, Children Court, Sitamarhi, has rejected the prayer of the petitioner for bail on erroneous conclusion that release of the petitioner would not only expose him to moral, physical and psychological danger, but would also lead to defeat the ends of justice. He next submits that learned 1st Additional Sessions Judge -cum- Presiding Officer, Children Court, Sitamarhi, did not consider the social investigation report in correct legal perspective. He further submits that the petitioner is not arrested at the spot;



rather, his name has transpired in this case on the basis of confessional statement of co-accused person (driver) and 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. 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.

8. Learned Counsel, in the aforesaid background, submits that the learned 1st Additional Sessions Judge -cum- Presiding Officer, Children Court, Sitamarhi, has failed to consider the scheme of the Act and has committed irregularity in arriving at the conclusion that release of the petitioner would not only expose him to moral, physical and psychological danger, but would also lead to defeat the ends of justice.

9. 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.

10. 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 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.

11. A Bench of this Court, in *Lalu Kumar @ Lalbabu @ Lallu v State of Bihar*, reported in *2019 (4) PLJR 833*, 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 Code of Criminal Procedure, 1973.

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 and the elder brother of the petitioner is



ready to take proper care of the petitioner after his release on bail. Accordingly, the conclusion arrived at by learned 1st Additional Sessions Judge -cum- Presiding Officer, Children Court, Sitamarhi, is not sustainable in the facts and circumstances of the case.

13. Accordingly, this revision application is allowed and the order, dated 05.12.2022, passed by learned 1st Additional Sessions Judge -cum- Presiding Officer, Children Court, Sitamarhi, in Criminal Appeal No. 43 of 2022, as well as order, dated 29.06.2022, passed by the Juvenile Justice Board, Sitamarhi, in J. J. B. Case No. 1408 of 2022, arising out of Sursand Police Station Case No. 334 of 2021, are hereby set aside.

14. 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, Sitamarhi, in J. J. B. Case No. 1408 of 2022, arising out of Sursand Police Station Case No. 334 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.)

Prabhakar Anand/-

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