

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.398 of 2023

Arising Out of PS. Case No.-153 Year-2022 Thana- BUXAR MUFFSIL District- Buxar

1. AWADHESH KUMAR @ VIKRANT YADAV Son of Umashankar Yadav Resident of village - Nadaon, P.s. - Muffasil, distt. - Buxar, At present Resident of Village - Jagdispur, P.S. - Buxar (M), Distt. - Buxar, under Guardian ship of Mother of the petitioner
2. Sandhya Devi @ Sandha Devi Wife of Umashankar Yadav Resident of village - Nadaon, P.s. - Muffasil, Distt. - Buxar, at present Resident of village - Jagdishpur, P.s. - Buxar (M), Distt. - Buxar

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Raghwendra Pratap Singh
For the Respondent/s : Mr.Nagendra Prasad

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

3 07-08-2023

1. Heard the parties.

2. This Criminal Revision application has been filed against the order dated 05.04.2023 passed in Cr. Appeal No. 04 / 2023 by learned A.D.J. 1st cum Special Judge (SC / ST & Children Court), Buxar and against the order dated 12.12.2022 passed by Juvenile Justice Board, Buxar in J.J.B. Case No. 810 / 2022 arising out of Buxar Muffasil PS Case No. 153 / 2022 dated 19-04-2022 under Section 302 / 34 of the Indian Penal Code and Section 27 of the Arms Act.

3. As per the FIR, six persons riding on two motorcyces came at the *Dalan* of the informant all having



weapons in their hands and on being identified by Umashankar Yadav the accused persons Sangram Yadav, Halchal Yadav and Bateshwar Yadav shot at the brother of the informant Saroj Kumar Singh, due to which his brother sustained injury and fell down on the ground and later on succumbed to injuries in Sadar Hospital.

4. Learned counsel for the petitioner submits that the petitioner was declared juvenile by the learned Juvenile Justice Board, Buxar after coming to the conclusion that the petitioner was minor at the time of alleged occurrence and was aged about 15 years 06 months 9 days. Learned counsel further submits that against the order passed by Juvenile Justice Board, Buxar refusing the bail application, the petitioner preferred appeal being Cr. Appeal No. 04 of 2023 before the learned A.D.J. 1st cum Special Judge (SC/ST & Children Court), Buxar who by the impugned judgment and order arrived at erroneous conclusion that social investigation report of the petitioner shows that the father of the petitioner is in judicial custody in relation to a murder case and the family of the juvenile has criminal background and there is no any suitable person in his family to take care of the juvenile. Moreover there is chance of physical danger to the CICL. The release of the petitioner will



not be in his interest because his release is likely to bring him into association with known criminal and also expose him to moral, physical and psychological danger and defeat the ends of justice. Learned counsel next submits that petitioner is not named in the FIR and his name has transpired in the confessional statement of the co-accused / Sangram Yadav.

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. 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.

8. 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.

9. 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.

10. From perusal of the record it appears that petitioner has remained in custody since 21.06.2022.

11. 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.

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 and the mother 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 05/04/2023 and 12/12/2022 respectively passed in Cr. Appeal No. 04 of 2023 and J.J.B. Case No. 810 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 Juvenile Justice Board, Buxar / court concerned in connection with J.J.B. Case No. 810 / 2022 arising out of Buxar (Muffasil) PS Case No. 153 of 2022 on 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, Buxar 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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