

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.409 of 2023**

Arising Out of PS. Case No.-260 Year-2022 Thana- SAHEBPUR KAMAL District-
Begusarai

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ASHISH KUMAR @ ASHISH NEHRA Son of Ganesh Yadav Resident of
village - Baburahi, P.s. - Sahebpur Kamal, Distt. - Begusarai (Bihar)

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Yogesh Kumar
For the Respondent/s : Mr. Binod Kumar

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**CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER**

3 08-08-2023 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 24.04.2023 passed by learned 1st
Additional Sessions Judge-cum-P.O. Children Court, Begusarai
in J.J.C.P. Case No. 03 of 2023. By impugned order, the learned
1st Additional Sessions Judge-cum-P.O. Children Court,
Begusarai, has affirmed the order, dated 09.02.2023, passed by
the Juvenile Justice Board, Begusarai in Juvenile Justice Board
No. 19 of 2023, arising out of Sahepur Kamal Police Station
Case No. 260 of 2022/G.R. No. 40 of 2022, registered for the
offences punishable under Section 376 of the Indian Penal Code
and Sections 4/16 of the of the Prevention of Child from Sexual



Offences Act, 2012.

3. The prosecution case, as per the written report submitted by the informant, is that while the informant's mother was in jail in some case, the petitioner, finding the informant alone, entered into the house and committed rape upon her showing weapon. It has further been alleged that the petitioner took photos and videos of the victim and threatened her to make them viral, if disclosed. The petitioner also sent the photos to the brother of the informant when the informant refused to give the money demanded by him.

4. Learned Counsel for the petitioner submits that the petitioner was declared juvenile by order, dated 10.01.2023 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, 07 months and 11 days. He next submits that by the impugned order, the learned 1st Additional Sessions Judge-cum-P.O. Children Court, Begusarai, has rejected the prayer of the petitioner for bail on erroneous conclusion that 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 Sessions Judge-cum-P.O.



Children Court, Begusarai, did not consider the social investigation report in correct legal perspective. The petitioner is in custody since 03.10.2022.

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-P.O. Children Court, Begusarai, 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 expose to the moral, physical or psychological danger which would defeat the ends of justice.

9. Learned Counsel further submits that the father 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 father has given an undertaking to reform his 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 the case of **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 Criminal Procedure Code.

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 father 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 may expose to the moral, physical or psychological danger which would defeat the ends of justice. As such, the conclusion arrived at by learned 1st Additional Sessions Judge-cum-P.O. Children Court, Begusarai, that the petitioner 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 24.04.2023, passed by learned 1st Additional Sessions Judge-cum-P.O. Children Court, Begusarai, in J.J.C.P. 03 of 2023 and the order, dated 09.02.2023, passed by the learned Juvenile Justice Board, Begusarai in Juvenile Justice Board Case No. 19 of 2023, 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, Begusarai, in connection with G.R. (POCSO) No. 40 of 2022/Juvenile Justice Board No. 19 of 2022, arising out of Sahepur Kamal Police Station Case No. 260 of 2022, subject to the following conditions:-

(i) that one of the bailors shall be the father of the



petitioner;

(ii) that the father 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, 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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