

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.403 of 2023

Arising Out of PS. Case No.-548 Year-2022 Thana- BANKA District- Banka

SANTOSH DAS @ SANTOSH KUMAR DAS SON OF GHUTAN DAS
RESIDENT OF VILLAGE- POKHARIYA, PS AND DISTRICT- BANKA
(BIHAR), UNDER THE CARE AND GUARDIANSHIP OF HIS FATHER
NAMELY GHUTAN DAS SON OF GOLU DAS, RESIDENT OF VIL-
LAGE- POKHARIYA, POLICE STATION AND DISTRICT- BANKA

... .. Petitioner/s

Versus

The State of Bihar BIHAR

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Md. Najmul Hodda, Advocate.
For the Respondent/s : Mr. Anish Chandra, A.P.P.

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

2 08-08-2023 Heard learned Counsel for the petitioner and learned
Additional Public Prosecutor appearing for the State.

2. This Criminal Revision has been filed against the
judgment and order dated 19.04.2023 passed by learned
Additional Sessions Judge-I, Banka, in Criminal Appeal No. 4
of 2023 by which the learned Additional Sessions Judge-I,
Banka, has affirmed the order, dated 27.2.2023, passed by the
learned Principal Magistrate, Juvenile Justice Board, Banka, in
connection with Banka P.S. Case No. 548 of 2022 registered for
the offence punishable under Sections 376, 420 of the Indian
Penal Code and Section 4 of the POCSO Act 2012.

3. The allegation as per the First Information Report,



is that the petitioner on the pretext of marriage used to make physical relationship with the victim/informant but refused to solemnize marriage with her.

4. Learned Counsel for the petitioner submits that the petitioner was declared juvenile by the learned Juvenile Justice Board after coming to the conclusion that the petitioner was minor at the time of alleged occurrence and was aged about 17 years. He next submits that by the impugned order, the learned Additional Sessions Judge-I, Banka, has rejected the prayer of the petitioner for bail on erroneous conclusion that it would defeat the ends of justice and it may expose the petitioner to moral, physical and psychological danger. He next submits that learned Additional Sessions Judge-I, Banka,, did not consider the social investigation report in correct legal perspective. He further submits that the petitioner has falsely been implicated in this case merely on the basis of the fact that earlier also the informant had filed a petition before the Mahila Police Station, Banka, for the similar allegation and after proper inquiry the case was dropped.

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 Additional Sessions Judge-I, Banka, has failed to consider the scheme of the Act and has committed irregularity in arriving at the conclusion that the petitioner may fall into bad company, if released on bail and it would defeat the ends of justice.

9. Learned Counsel further submits that the mother of the petitioner is ready to take proper care of the petitioner after release him 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 mother 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 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 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 mother of the petitioner is ready to take proper care of the petitioner after his release on bail and there is no likelihood that the petitioner will fall into association with any known criminal(s). As such, the conclusion arrived at by learned Additional Sessions Judge-I, Banka, that the petitioner may fall into bad company, is not sustainable in the facts and circumstances of the case.

13. Accordingly, this Criminal Revision is allowed and the order dated 27.02.2023 and 19.04.2023 respectively



passed in Criminal Appeal No. 4 of 2023 by learned Additional Sessions Judge-I, Banka, and learned Principal Magistrate, Juvenile Justice Board Banka in connection with Banka P.S. Case No. 548 of 2022 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 Principal Magistrate, Juvenile Justice Board, Banka, in connection with Banka P.S. Case No. 548 of 2022, subject to 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, Banka, 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)

S.Ali/-

U			
---	--	--	--

