

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.456 of 2022

Arising Out of PS. Case No.-538 Year-2021 Thana- SIWAN MUFFASIL District- Siwan

SAIF ALI Son of Janta Mian @ Shahid alam Resident of village - Barhan
Gopal, Police Station- Siwan Muffasil, District - Siwan under the Guardianship
of his Mother namely Asamina Khatun

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Javed Aslam

For the Respondent/s : Mr.Uma Shankar Prasad Singh

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

3 28-08-2023 Heard learned Counsel for the petitioner and learned
Additional Public Prosecutor appearing for the State.

2. This revision has been filed against the judgment
and order dated 23.04.2022 passed by Shri Akhilesh Kumar Jha,
Presiding Officer, Children Court -cum- 1st Additional District
& Sessions Judge -cum- Special Judge, Siwan, in Criminal
Appeal No. 22 of 2022. By impugned order, the learned
Presiding Officer, Children Court -cum- 1st Additional District
& Sessions Judge -cum- Special Judge, Siwan, has affirmed the
order, dated 14.03.2022, passed by learned J. J. Board, Siwan, in
J.E. No. 388 of 2021, arising out of Muffasil P. S. Case No. 538
of 2021, registered for the offences punishable under Sections



341/323/324/307/302/504/34 of the Indian Penal Code.

3. The prosecution case, as per the First Information Report, is that, on 26.10.2021, accused persons, including the petitioner, were playing Ludo at the door of the informant. Upon objection being made by the son of the informant, namely, Tazrul Hauque, accused persons started abusing and assaulting him, thereafter, another son of the informant, namely, Abdul Haque, came to the rescue. It has further been alleged that on orders of accused Janta Miya, co-accused Arbaz Ali assaulted on the chest of Tazrul Hauque by means of knife and petitioner assaulted on ears and nose of Abdul Hauque by means of knife, due to which, both sons of the informant sustained injuries and were taken to the hospital, however, Tazrul Hauque died during the course of treatment.

4. Learned Counsel for the petitioner submits that the petitioner was declared juvenile by order, dated 25.01.2022 passed by the learned Juvenile Justice Board, Siwan, after coming to the conclusion that the petitioner was minor at the time of alleged occurrence and was aged about 15 years 03 months and 01 day. He next submits that by the impugned order, the learned Presiding Officer, Children Court -cum- 1st Additional District & Sessions Judge -cum- Special Judge,



Siwan, 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. He next submits that Presiding Officer, Children Court -cum- 1st Additional District & Sessions Judge -cum- Special Judge, Siwan, did not consider the social investigation report in correct legal perspective.

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 for the petitioner, in the aforesaid background, submits that the learned Presiding Officer, Children Court -cum- 1st Additional District & Sessions Judge -cum- Special Judge, Siwan, 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. He further submits that similarly situated co-accused persons namely, Arbaz Ali and Amir Ali have been granted bail by this Court in Cr. Revision No. 583 of 2022 and 474 of 2022 respectively.

9. Learned Counsel further submits that mother 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 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 and 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 Presiding Officer, Children Court -cum- 1st Additional District & Sessions Judge -cum- Special Judge, Siwan, is not sustainable in the facts and circumstances of the case.

13. Accordingly, this appeal is allowed and the order dated 14.03.2022 and 23.4.2022 respectively passed by the Presiding Officer, Children Court -cum- 1st Additional District & Sessions Judge -cum- Special Judge, Siwan, in Criminal Appeal No. 22 of 2022, J.E. No. 388 of 2021 arising out of Siwan Muffasil P.S. Case No. 538 of 2021 and Juvenile Justice Board, Siwan , 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, Siwan, in connection with J.E. No. 388 of 2021 arising out of Siwan Muffasil P. S. Case No. 538 of 2021, 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, Siwan, 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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