

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL REVISION No.407 of 2023

Arising Out of PS. Case No.-402 Year-2022 Thana- MAJORGANJ District- Sitamarhi

NITESH KUMAR RAM SON OF RAJENDRA RAM RESIDENT OF VILLAGE- BALARA, DUMARIA, PS- MALANGWA, DISTRICT- SARLAHI, NEPAL THROUGH HIS GUARDIANSHIP FATHER RAJENDRA RAM, SON OF AYODHI RAM. RESIDENT OF VILLAGE- BALARA, DUMARIA, PS- MALANGWA, DISTRICT- SARLAHI, NEPAL

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Ashok Kumar Jha
For the Respondent/s : Mr. Kalyan Shankar

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

3 03-08-2023 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 01.05.2023 passed by learned Additional Sessions Judge-cum-Special Judge, Children's Court, Sitamarhi, in Criminal Appeal No. 20 of 2023. By impugned order, the learned Additional Sessions Judge-cum-Special Judge, Children's Court, Sitamarhi, has affirmed the order, dated 03.02.2023, passed by the Juvenile Justice Board, Sitamarhi, in Juvenile Justice Board No. 1938 of 2022, arising out of Majorganj Police Station Case No. 402 of 2022,



registered for the offences punishable under Sections 8/20(b)(II) (b)/22(b)/23(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985.

3. The prosecution case, as per the First Information Report, is that, on 28.11.2022, the police, on secret information during patrolling, apprehended the petitioner and another accused person, who were coming from Nepal on motorcycle and upon search, 04 kgs. of ganja was recovered from the motorcycle.

4. Learned Counsel for the petitioner submits that the petitioner was declared juvenile by order, dated 23.12.2022 passed by the learned Juvenile Justice Board, Sitamarhi, after coming to the conclusion that the petitioner was minor at the time of alleged occurrence and was aged about 17 years, 08 months and 15 days. He next submits that by the impugned order, the learned Additional Sessions Judge-cum-Special Judge, Children's Court, Sitamarhi, 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 and will defeat the ends of justice. He next submits that learned Additional Sessions Judge-cum-Special Judge, Children's Court, Sitamarhi, did not consider the social



investigation report in correct legal perspective. The petitioner is in custody since 29.11.2022.

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. Learned Counsel for the petitioner further relied upon Section 12 of the Act, which is quoted as follows:-

“12. Bail to a person who is apparently a child alleged to be in conflict with law.- (1) When any person, who is apparently a child and is alleged to have committed a bailable or non-bailable offence, is apprehended or detained by the police or appears or brought before a Board, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, be released on bail with or without surety or placed under the supervision of a probation officer or under the care of any fit person:

Provided that such person shall not be so released if there appears reasonable grounds for believing that the release is likely to bring that person into association with any



known criminal or expose the said person to moral, physical or psychological danger or the person's release would defeat the ends of justice, and the Board shall record the reasons for denying the bail and circumstances that led to such a decision.

(2) When such person having been apprehended is not released on bail under subsection (1) by the officer-in-charge of the police station, such officer shall cause the person to be kept only in an observation home in such manner as may be prescribed until the person can be brought before a Board.

(3) When such person is not released on bail under sub-section (1) by the Board, it shall make an order sending him to an observation home or a place of safety, as the case may be, for such period during the pendency of the inquiry regarding the person, as may be specified in the order.

(4) When a child in conflict with law is unable to fulfill the conditions of bail order within seven days of the bail order, such child shall be produced before the Board for modification of the conditions of bail.”

8. 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.



9. Learned Counsel, in the aforesaid background, submits that the learned Additional Sessions Judge-cum-Special Judge, Children's Court, Sitamarhi, 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.

10. Learned Counsel further submits that the 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.

11. 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.

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) and/or he may expose to the moral, physical or psychological danger which would defeat the ends of justice. As such, the conclusion arrived at by learned Additional Sessions Judge-cum-Special Judge, Children's Court, Sitamarhi, is not sustainable in the facts and circumstances of the case.

13. Accordingly, this revision application is allowed and the order dated 01.05.2023, passed by learned Additional Sessions Judge-cum-Special Judge, Children's Court, Sitamarhi, in Criminal Appeal No. 20 of 2023 and order, dated 03.02.2023, passed by the Juvenile Justice Board, Sitamarhi in Juvenile Justice Board Case No. 1938 of 2022, 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, Sitamarhi, in connection with Juvenile Justice Board No. 1938 of 2022, arising out of Majorganj Police Station Case No. 402 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, Sitamarhi, 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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