

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL REVISION No.414 of 2023**

Arising Out of PS. Case No.-54 Year-2023 Thana- RUNISAIDPUR District- Sitamarhi

SHIVAM KUMAR Son of Rajeev Kumar @ Guddu Singh Resident of village - Tilak Tajpur, P.S. - Runnisaidpur, Distt. - Sitamarhi, through his guardianship Mother Nutan Kumari, wife of Rajeev Kumar @ Guddu Singh, Resident of village - Tilak Tajpur, P.S. - Runnisaidpur, Distt. - Sitamarhi

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

**Appearance :**

For the Petitioner/s : Mr. Ashok Kumar Jha, Advocate.

For the Respondent/s : Mr. Akshay Lal Pandit, APP

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

5      05-09-2023      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 15.05.2023 passed by learned A.D.J. 1<sup>st</sup> Class – cum-Children Court, Sitamarhi, in Criminal Appeal No. 30 of 2023. By impugned order, the learned A.D.J. 1<sup>st</sup> Class – cum-Children Court, Sitamarhi, has affirmed the order, dated 13.04.2023, passed by learned Principal Magistrate, Juvenile Justice Board, Sitamarhi, in JJB Case No. 1850 of 2023 arising out of Runnisaidpur P.S. Case No. 54 of 2023 registered for the offences punishable under Sections 302/34 of the Indian Penal Code and Section 27 of the Arms Act.

3. The allegation as per the First Information Report,



is that on 28.01.2023 all the FIR named accused including petitioner came at the door of the informant and called the informant's son namely, Chandan Kumar and when he came outside the house co-accused Vicky Singh and Golu Singh on the order of co-accused Manoj Singh fired from pistol, which hit in his chest, on account of which, he fell down and died on the spot.

4. Learned Counsel for the petitioner submits that the petitioner was declared juvenile by order dated 6.4.2023 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 09 months and 04 days. He next submits that by the impugned order, the learned A.D.J. 1<sup>st</sup> Class – cum-Children Court, Sitamarhi, has rejected the prayer of the petitioner for bail on erroneous conclusion that grant of bail would cause moral and psychological danger to the petitioner and release of the petitioner would defeat the ends of justice. He next submits that learned A.D.J. 1<sup>st</sup> Class – cum-Children Court, Sitamarhi, did not consider the social investigation report in correct legal perspective and the petitioner is in custody since 30.01.2023.

5. This Court vide order dated 7.8.2023 had called for



social background report as well as social investigation report and in pursuance thereof, the report of learned Probation Officer, Sitamarhi, dated 4.3.2023 is on record and from perusal of the same, it appears that mother of the petitioner looks after the family doing agricultural work after father of the petitioner has been convicted in another case. As such, there is no difficulty in rehabilitation of the petitioner under the care of her mother. It further says that due to present case, the petitioner could not take 10<sup>th</sup> examination and he is willing to study further and wants to complete his higher studies of inter in Arts.

6. 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”*

7. 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.

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 A.D.J. 1<sup>st</sup> Class – cum-Children Court, Sitamarhi, has failed to consider the scheme of the Act and has committed irregularity in arriving at the conclusion that the grant of bail to the petitioner would expose him to moral and psychological danger and will 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. 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.



13. 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 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 per the social background report as well as social investigation report it appears that mother of the petitioner looks after the family doing agricultural work and petitioner helps her mother in doing agricultural activity as well as he is willing to study further and wants to complete his higher studies of inter in Arts. As such, the conclusion arrived at by learned A.D.J. 1<sup>st</sup> Class – cum-Children Court, Sitamarhi, is not sustainable in the facts and circumstances of the case.

14. Accordingly, this Criminal Revision is allowed and the order dated 15.05.2023 and 13.4.2023 respectively passed in Criminal Appeal No. 30 of 2023 by learned A.D.J. 1<sup>st</sup> Class – cum-Children Court, Sitamarhi and learned Principal Magistrate, Juvenile Justice Board, Sitamarhi, in JJB Case No. 1850 of 2023 arising out of Runnisaidpur P.S. Case No. 54 of 2023 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 Principal Magistrate, Juvenile Justice Board, Sitamarhi, in JJB Case No. 1850 of 2023, arising out of Runnisaidpur P. S. Case No. 54 of 2023, 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, Rohtas at Sasaram, 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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