

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.421 of 2023

Arising Out of PS. Case No.-179 Year-2022 Thana- MAKER District- Saran

NIKHIL KUMAR @ NIKHIL RAI S/O MAHATMA RAI Under guardian
ship of father, R/O Village- Balvan Tola, PS. Doriganj, Distt. Chapra at Saran
.. ... Petitioner/s

Versus

THE STATE OF BIHAR Respondent/s

Appearance :

For the Petitioner/s : Mr. Pramod Kumar Pandey, Adv.
For the Respondent/s : Mr. Arun Kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

3 31-07-2023 Heard Mr. Pramod Kumar Pandey, learned counsel
for revisionist/petitioner and Mr. Arun Kumar Singh, learned
APP for the State.

2. The present Cr. Revision application has been filed against the judgment and order dated 19.04.2023 passed in Cr. Appeal No. 01/2023 by the learned 1st Additional Sessions Judge-cum-Children Court, Saran at Chapra along with order dated 21.11.2022 passed by Juvenile Justice Board, Saran at Chapra in connection with Juvenile Inquiry Case No. 2349/2022 arising out of Maker PS Case No. 179/2022 for the offence punishable under Sections 328/308/304/120B/34 of the IPC and 37 (1) (2) of the Bihar Prohibition & Excise Act, 2016 whereby and whereunder both the learned courts below have refused to release the revisionist/petitioner on bail.

3. The allegation as per FIR is that as many as eight



persons died due to consumption of spurious hooch including the father of the informant. The spurious alcoholic beverage was offered to his father and others by one Chandeshwar Mahto.

4. Learned counsel for the petitioner submits that the petitioner/revisionist has not committed any offence in the manner alleged inasmuch as he is not named in the FIR. He next submits that the petitioner has been implicated in this case merely on the basis of confessional statement of a co-accused, namely, Ramanand Manjhi who has already been granted bail by the Co-ordinate Bench of this Court *vide* Cr. Misc. No. 69753/2022 and analogous cases (Annexure-4). It is further stated that so many other accused persons have been granted bail by this Court *vide* Annexure-3 and 4. He further submits that the findings arrived at by the learned appellate courts for rejection of the bail application are based upon no material who by impugned judgment arrived at an erroneous conclusion that if the order of release of the petitioner is passed, it may defeat the ends of justice and lead to an unwanted moral, physical and psychological danger to the CICL. It has next been submitted that the learned court below has passed the impugned order mechanically and without application of judicial mind. He next submits that the petitioner is in judicial custody since



14.09.2022.

5. Learned counsel has placed reliance upon Sections 3 (i) (iv) (v) and (xiv) of Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as 'the Act') which are quoted hereinbelow:-

(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 the above mentioned provisions, 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 best interest of the child. Learned counsel further submits that the principle of family responsibility and principle of fresh start have also been recognized in the Act.

7. Learned counsel further relies upon Section 12 of the Act which is 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 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 sub-section (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 maybe, 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 an exception.

9. Learned counsel, in the aforesaid background, submits that the learned court below has failed to consider the scheme of the Act and has committed material irregularity in arriving at the conclusion that the petitioner, if released on bail would defeat the ends of justice as the petitioner has committed a heinous crime.

10. On the other hand, learned counsel for the State submits that from perusal of Section 12 of the Act, it appears that bail is a matter of right to the petitioner and denial is an exception, this Court may consider to pass an appropriate order in accordance with the provisions of the Act.

11. From perusal of the records, it appears that petitioner is in custody since 14.09.2022.

12. Having regard to the submissions made by the parties and taking into consideration the material on record and the fact that there was no material before the learned appellate court to come to the conclusion that if the order of release of the petitioner is passed, it may defeat the ends of justice and lead to an unwanted moral, physical and psychological danger to the



CICL and taking into consideration that the petitioner is not named in the FIR, his name has been dragged in this case on the basis of confessional statement of a co-accused, namely, Ramanand Manjhi, who has been granted bail by a Bench of this Court and other co-accused persons have also been granted bail by the co-ordinate Bench of this Court *vide* Anneuxre-3 and 4, and the period of incarceration of the petitioner, this Court is of the considered view that the impugned judgment and order passed by both the courts below are not sustainable in the eyes of law inasmuch as they are not consistent with the aims and objects of the Act.

13. Accordingly, the judgment and order dated 19.04.2023 passed in Cr. Appeal No. 01/2023 by the learned 1st Additional Sessions Judge-cum-Children Court, Saran at Chapra along with order dated 21.11.2022 passed by Juvenile Justice Board, Saran at Chapra in connection with Juvenile Inquiry Case No. 2349/2022 arising out of Maker PS Case No. 179/2022 for the offence punishable under Sections 328/308/304/120B/34 of the IPC and 37 (1) (2) of the Bihar Prohibition & Excise Act, 2016 are hereby, set aside and the revisionist/petitioner, **Nikhil Kumar @ Nikhil Rai** is directed to 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, Saran at Chapra in connection with Juvenile Inquiry Case No. 2349/2022 arising out of Maker PS Case No. 179/2022, subject to the condition that one of the bailors will be the father of the petitioner.

14. With the aforesaid observation and direction, the instant application is allowed.

(Anil Kumar Sinha, J)

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