

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.431 of 2023

Arising Out of PS. Case No.-190 Year-2022 Thana- SISWAN District- Siwan

AKASH KUMAR YADAV son of Jagdev Yadav Village- Sonbarsha Ps-
Siswan Dist- Siwan

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Ramchandra Sahni, Advocate.

For the Respondent/s : Mr.Ram Priya Sharan Singh, A.P.P.

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

4 28-08-2023 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 12.05.2023 passed by learned Children Court-cum-1st Additional District and Sessions Judge, Siwan, in Criminal Appeal No. 10 of 2023. By impugned order, learned Children Court-cum-1st Additional District and Sessions Judge, Siwan, has affirmed the order, dated 24.03.2023, passed by learned Juvenile Justice Board, Siwan, in G.R. No. 3493 of 2022, J.E. Case No. 573 of 2022 arising out of Siswan P.S. Case No. 190 of 2022 registered for the offence punishable under Sections 307, 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 when the informant along with one Rakesh Kumar Yadav was returning to his village after purchasing vegetables, indiscriminate firing was made by the accused Sanjeet Mahto along with his friends, on account of which, Rakesh Kumar Yadav received fire injury on his neck and died on the spot and the informant received gunshot injury on his left leg. The allegation against the petitioner is that he was also involved in the occurrence.

4. Learned Counsel for the petitioner submits that the petitioner was declared juvenile by order dated 7.11.2022 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 14 years, 4 months and 17 days. He next submits that by the impugned order, the learned Children Court-cum-1st Additional District and Sessions Judge, Siwan, 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 Children Court-cum-1st Additional District and Sessions Judge, Siwan, did not consider the social investigation report in correct legal perspective and the petitioner is in custody since 16.8.2022.



Learned counsel also submits that general and omnibus allegation has been levelled against the petitioner and he has falsely been implicated in this case due to enmity.

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 Children Court-cum-1st Additional District and Sessions Judge, Siwan, has failed to consider the scheme of the Act and has committed irregularity in arriving at the conclusion that the petitioner, if released on bail, would defeat the ends of justice. He submits that similarly situated co-accused Umakant Yadav has already been granted bail by this Court in Cr. Revision No. 311 of 2023.

9. 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.

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 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 Children Court-cum-1st Additional District and Sessions Judge, Siwan, 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 12.05.2023 passed in Criminal Appeal No. 10 of 2023 by learned Children Court-cum-1st Additional District and Sessions Judge, Siwan, affirming the order dated 24.03.2023 passed by Juvenile Justice Board Siwan in J.E. No. 573 of 2022, G.R. No. 3493 of 2022 arising out of Siswan P.S. Case No. 190 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) with two sureties of the like amount each to the satisfaction of learned Principal Magistrate, Juvenile Justice Board, Siwan, in J.E. No. 573 of 2022, G.R. No. 3493 of 2022 arising out of Siswan P.S. Case No. 190 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, 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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