

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL REVISION No.460 of 2023

Arising Out of PS. Case No.-21 Year-2021 Thana- NOWKOTHI GARHPURA District-
Begusarai

SUNNI KUMAR Son of Deepak Yadav @ Dipak Kumar Yadav Resident of
village - Rani Shakarpura, P.S.- Gangaur, District - Khagaria. Under the
guardianship of Mother of the petitioner namely Pramila Devi aged about 43
years wife of Deepak Yadav @ Dipak Kumar Yadav, Resident of village -
Rani Shakarpura, P.S.- Gangaur, District – Khagaria.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Amresh Kumar @ Tuntun Poddar Son of Late Ganesh Poddar Resident of
village - Vishnupur, P.S.- Nawkothe, District - Khagaria.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Jitendra Narain Sinha
For the Respondent/s : Mr. Ajit Kumar

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

4 18-09-2023 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 31.03.2023, passed by learned 1st
Additional Sessions Judge-cum-Special Judge, Children's
Court, Begusarai, in Criminal Appeal No. 04 of 2023. By
impugned order, the learned 1st Additional Sessions Judge-cum-
Special Judge, Children's Court, Begusarai, has affirmed the
order, dated 15.12.2022, passed by the Juvenile Justice Board,
Begusarai, in Juvenile Justice Board No. 124 of 2022, arising



out of Nawkothi Police Station Case No. 21 of 2021, dated 16.02.2021, corresponding to G.R. No. 551 of 2021 registered for the offences punishable under Sections 302/120B/34 of the Indian Penal Code and Section 27 of the Arms Act.

3. The prosecution case, as per the First Information Report, is that co-accused persons fired upon the father of the informant due to which he sustained bullet injuries and the father of the informant died while going to the hospital. The petitioner is not named in the First Information Report.

4. Learned counsel submits that altogether eleven persons are named in the First Information Report and the petitioner is not named in the First Information Report. The petitioner has been made accused on the basis of confessional statement made before the police in Nawkothi Police Station Case No. 21 of 2021 corresponding to G.R. No. 551 of 2021. The petitioner was declared juvenile on 18.05.2022 by Juvenile Justice Board, Begusarai and his age was assessed about 14 years 10 month and 11 days, on the date of occurrence. All the accused persons, named in the First Information Report, are from Begusarai, whereas, the petitioner resides at Khagaria, who has been made accused at the instance of motivated persons and the petitioner remained in custody for more than two years



i.e. since 15.09.2021. He next submits that by the impugned order, the learned 1st Additional Sessions Judge-cum-Special Judge, Children's Court, Begusarai, has rejected the prayer of the petitioner for bail on erroneous conclusion that there is a possibility that bail to the petitioner may cause moral, physical and psychological danger to him which would defeat the ends of justice. He next submits that learned 1st Additional Sessions Judge-cum-Special Judge, Children's Court, Begusarai, 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, in the aforesaid background, submits that the learned 1st Additional Sessions Judge-cum-Special Judge, Children's Court, Begusarai, 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.

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 case of **Lalu Kumar @ Lalbabu @ Lallu v. State of Bihar**, reported in **2019 (4) PLJR 833**, 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 Criminal Procedure Code.

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 the mother of the petitioner is ready to take proper care of the petitioner after his release on bail as such there is no likelihood that the petitioner will expose to the moral, physical or psychological danger which would defeat the ends of justice. As such, the conclusion arrived at by learned 1st Additional Sessions Judge-cum-Special Judge, Children's Court, Begusarai, is not sustainable in the facts and circumstances of the case.

13. Accordingly, this revision application is allowed and the order dated 31.03.2023, passed by learned 1st Additional Sessions Judge-cum-Special Judge, Children's Court, Begusarai, in Criminal Appeal No. 04 of 2023 and order, dated 05.12.2022, passed by learned Juvenile Justice Board, Begusarai, in Juvenile Justice Board No. 124 of 2022, are 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, Begusarai, in connection with Juvenile Justice Board No. 124 of 2022, arising out of Nawkothe Police Station Case No. 21 of 2021, corresponding to G.R. No. 551 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, Begusarai, 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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