

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.477 of 2023

Arising Out of PS. Case No.-6 Year-2023 Thana- MAHILA P.S. District- Banka

SACHIN KUMAR @ SACHIN KUMAR YADAV Son of Butan Yadav R/o
Village-Manjhali Kushaha, P.S.-Fullidumar, District-Banka

... .. Petitioner/s

Versus

THE STATE OF BIHAR Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Dhananjay Kumar Pandey
For the Respondent/s : Mr.Binay Krishna

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

4 25-09-2023 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 14.06.2023, passed by learned 1st Additional Sessions Judge, Banka, in Criminal Appeal No. 08 of 2023. By impugned order, the learned 1st Additional Sessions Judge, Banka, has affirmed the order, dated 26.05.2023, passed by the Juvenile Justice Board, Banka, in Mahila Police Station Case No. 06 of 2023, registered for the offences punishable under Sections 376/504/506 of the Indian Penal Code, Section 4 of the Prevention of Children from Sexual Offences Act, 2012 and Sections 3 (I) (R)(S)(W)/3(2) (vA) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 .

3. The prosecution case, as per the First Information



Report, is that the petitioner sexually assaulted the minor daughter of the informant.

4. Learned Counsel for the petitioner submits that the petitioner was declared juvenile by the learned Juvenile Justice Board, Banka, after coming to the conclusion that the petitioner was minor at the time of alleged occurrence. He next submits that by the impugned order, the learned 1st Additional Sessions Judge, Banka, has rejected the prayer of the petitioner for bail on erroneous conclusion that there is a possibility that the petitioner will again come in contact with the known criminals, if released on bail and grant of bail to the petitioner may expose him to moral, physical and psychological danger. He next submits that learned 1st Additional Sessions Judge, Banka, did not consider the social investigation report in correct legal perspective. He further submits that the minor daughter of the informant, in her statement recorded under Section 164 of the Code of Criminal Procedure, 1973, has not supported the prosecution version inasmuch as in her statement under Section 164 of the Code of Criminal Procedure, 1973, she has not stated that the petitioner has sexually assaulted her. He further submits that the petitioner is in custody since 19.04.2023.

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, Banka, has failed to consider the scheme of the Act and has committed irregularity in arriving at the conclusion that the petitioner will again come in contact with the known criminals, if released on bail.

9. Learned Counsel further submits that the aunt (mausi) 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 aunt



(mausi) has given an undertaking to reform the 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 ***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 Code of Criminal Procedure, 1973.

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 and the aunt (mausi) 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 fall into association with any known criminal(s). Accordingly, the conclusion arrived at by learned 1st Additional Sessions Judge, Banka, is not sustainable in the facts and circumstances of the



case.

13. Accordingly, this revision application is allowed and the order, dated 14.06.2023, passed by learned 1st Additional Sessions Judge, Banka, in Criminal Appeal No. 08 of 2023, as well as order, dated 26.05.2023, passed by the Juvenile Justice Board, Banka, in Mahila Police Station Case No. 06 of 2023, are 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 Juvenile Justice Board, Banka, in Mahila Police Station Case No. 06 of 2023, subject to the following conditions:-

(i) that one of the bailors shall be the aunt (mausi) of the petitioner;

(ii) that the aunt (mausi) of the petitioner shall file an affidavit before the learned Juvenile Justice Board, Banka, 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.)

Prabhakar Anand/-

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