

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.576 of 2022**

Arising Out of PS. Case No.-6 Year-2022 Thana- MADANPUR District- Aurangabad

SHATRUGHAN KUMAR @ SATRUDHAN SAH S/o Brij Mohan Sao @
Brijamohan Saw R/o village- Pranpur, P.S.- Madanpur, District- Aurangabad
(Bihar)

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s : Ms.Rupa Kumari

For the Respondent/s : Mr.Aditya Narayan Singh.1

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

3 01-08-2023 1. Heard Ms. Rupa Kumari, learned counsel for the
petitioner and Mr. Aditya Narayan Singh No. 1, learned A.P.P.
for the State.

2. This Criminal Revision application has been filed
against the order dated 07/07/2022 passed by learned 1st Addl.
District & Sessions Judge cum Spl. Judge (SC/ST), Aurangabad
in Cr. Appeal No. 23 / 2022 arising out of Madanpur PS Case
No. 6 / 2022, G.R. No. 3 / 2022, JJB No. 897 / 2021 and the
order dated 12-05-2022 passed by Principal Magistrate, Juvenile
Justice Board, Aurangabad in Madanpur PS Case No. 6 / 2022 ,
G.R. No. 3 / 2022, JJB No. 897 / 2021 whereby and
whereunder prayer for bail of the accused / appellant



Shatrughan Kumar @ Satrudhan Sah has been rejected and further to grant regular bail to the petitioner who is languishing in observation home in connection with Madanpur PS Case No. 6 of 2022 dated 04/01/2022 registered under Section 376 of the IPC and Section 8 of the POCSO Act.

3. As per the prosecution case on 02.01.2022 at about 04:45 P.M. when the informant -victim had gone to attend the natural call, the petitioner / Shatrughan Kumar came from the back, caught hold of her mouth by handkerchief and took her in a field and raped her and later on the victim poured K. Oil on her body and tried to set herself ablaze.

4. Learned counsel for the petitioner submits that the petitioner was declared juvenile by order dated 12.05.2022 passed by the learned Juvenile Justice Board, Aurangabad after coming to the conclusion that the petitioner was minor at the time of alleged occurrence and was aged about 17 years 09 months 06 days. Learned counsel further submits that there was love affair between the petitioner and the victim/informant which will be apparent from Annexure-3. Learned counsel further submits that against the order passed by Juvenile Justice Board refusing the bail application, the petitioner preferred an appeal vide Cr. Appeal No. 23 of 2022 before the learned 1st



Addl. District & Sessions Judge cum Spl. Judge (SC / ST), Aurangabad who by the impugned judgment and order arrived at erroneous conclusion that perusal of social investigation report of the petitioner it appears that release of the petitioner on bail may result in further deterioration in his life. The petitioner has not yet completed 18 years of age and there is every likelihood that his release at this stage would bring him in association with criminals and anti social elements of locality and defeat the ends of justice. He next submits that the petitioner has got no criminal antecedent.

5. Learned counsel for the petitioner relies upon Section 3 (i), (iv), (v) & (xiv) of the Juvenile Justice (Care and Protection of Children) Act, 2015 {hereinafter referred to as “the Act”} which is 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 under the Act.

7. Learned counsel further relies upon Section 12 of the Act, which is quoted 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 (2 of 1974) 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 subsection (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 may be, 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 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 court below has failed to consider the scheme of the Act and has committed material irregularity in arriving at the conclusion that release of petitioner would bring him in association with bad elements of society and would bring further deterioration in his life.

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 exception and this court may consider to pass appropriate order in accordance with the provisions of the Act for release the petitioner on bail in the best interest of the child.

11. From perusal of the record it appears that



petitioner has remained in custody since 05-01-2022.

12. Having regard to the submissions made by the parties and taking into consideration the material on record, I am of the considered opinion that there is possibility of reform in the petitioner inasmuch as he has got no criminal antecedent and the father 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 would fall into association with any known criminal. Further taking into consideration the materials on record 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 in consonance with the aims and objectives of the Act.

13. In the result, I am of the opinion that the learned court below has committed material irregularity in arriving at the conclusion that grant of bail to the petitioner would amount to defeating the ends of justice.

14. Accordingly, the judgment and order dated 07/07/2022 and 12/05/2022 respectively passed in Cr. Appeal No. 23 of 2022 and (POCSO) Gr. No. 03 / 2022, J.J.B. Case No. 897 of 2021 by learned 1st Addl. District and Sessions



Judge cum Spl. Judge (SC/ST), Aurangabad and Juvenile Justice Board, Aurangabad 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, Aurangabad / court concerned in connection with (POCSO) Gr. No. 03 / 2022, J.J.B. No. 897 / 2021 arising out of Madanpur PS Case No. 6 / 2022, G.R. No. 3 / 2022 on the *following* condition:-

(i) that one of the bailors shall be the father of the petitioner.

(ii) that the father of the petitioner shall file an affidavit before the learned Juvenile Justice Board, Aurangabad giving specific undertaking that after release of the petitioner on bail, he 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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