

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.485 of 2023

Arising Out of PS. Case No.-757 Year-2022 Thana- MUFFASIL District- West Champaran

SAURABH KUMAR SHUKLA @ SAURAV SHUKLA @ SAURABH SHUKLA Son of Anand Kumar Shukla R/o vill - Naugawa, P.S., - Yogapatti, Distt. - West Champaran, Through his Father Being Natural Guardian Namely - Anand Kumar Shukla, Aged about 56 Years, Son of Bhola Shukl, R/o Naugawa, ward no. 9, P.s. - Yogapatti, Distt. - West Champaran

... .. Petitioner/s

Versus

The State of Bihar Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Bimlesh Kumar Pandey
For the Respondent/s : Mr.Indu Kumari Srivastava

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

2 07-08-2023

1. Heard the parties.

2. This Criminal Revision application has been filed against the order dated 22.05.2023 passed in Cr. Appeal No. 21 / 2023 by learned Additional District and Sessions Judge 1st cum Children Court, Bettiah, West Champaran and also for setting aside the order dated 29/03/2023 passed by learned Juvenile Justice Board, West Champaran at Bettiah in J.J.B. Case No. 1039 / 2022 arising out of Bettiah (Muffasil) PS Case No. 757 / 2022 registered under Section 363 of the IPC and later on added Sections 302, 201, 379, 411 of the IPC.

3. The case of the prosecution in brief is that the husband of the informant namely, Munna Chaurasiya was a



driver and he used to work as driver for the Swift Dezire Car of one Samar Paswan. On 30.08.2022 her husband went to “Thori”. At about 11:00 A.M. there had been talk of the informant with her husband, when he disclosed that he would not come to home for meal in the afternoon. Again on 3:00 P.M. the husband of the informant made video call to her when the informant saw that her husband was eating meat and two persons were also sitting there. The informant saw them and the husband of the informant disclosed that he came along with those two persons. At about 7:00 P.M. the informant made video call on the mobile phone of her husband then saw that her husband was on driving seat and the same two persons were sitting behind taking snacks. The husband of the informant disclosed that he would reach home in half an hour and thereafter the phone got in *switch off* mode. The family members and the vehicle owner started searching of the husband of the informant but could not trace out.

4. Learned counsel for the petitioner submits that the petitioner was declared juvenile by the learned Juvenile Justice Board, West Champaran at Bettiah after coming to the conclusion that the petitioner was minor at the time of alleged occurrence and was aged about 15 years 01 month 9 days.



Learned counsel further submits that against the order passed by Juvenile Justice Board, West Champaran, Bettiah refusing the bail application, the petitioner preferred appeal being Cr. Appeal No. 21 of 2023 before the learned Addl. Sessions Judge 1st cum Children Court, Bettiah, West Champaran who by the impugned judgment arrived at erroneous conclusion that juvenile along with others made a program to visit Thori by a hired Swift Dezire car, after visiting the whole day, they came back to Bettiah in the evening and due to dispute with the driver Munna Chaurasia regarding the fare, the juvenile murdered the driver of the Swift Dezire Car with the help of co-accused person and taken away the Car for sale in Raxaul and sold it to one Gufran Ali. The said Gufran Ali told the name of the juvenile and another accused namely Amrit Ojha who sold the Swift Dezire Car to him. The social investigation report suggests that the juvenile / appellant is a student of Class -X and due to non living with his parents, he has come in bad company. The release of the petitioner will not be in his interest because his release is likely to bring him in association with known criminal and also expose him to moral, physical and psychological danger and defeat the ends of justice. Learned counsel next submits that no motive has been disclosed in the FIR for the



petitioner to be involved in the occurrence. He next submits that charge sheet has already been submitted in the case and there is no chance that the petitioner would tamper with the evidences if released on bail. He next submits that the co-accused namely, Ashish Raj Mishra, who too being declared juvenile, has been allowed bail in Cr. Appeal No. 67 / 2022 vide judgment dated: 27/01/2023 passed by learned Additional Sessions Judge 1st, Bettiah, West Champaran. He also submits that petitioner has not been put on T.I. Parade.

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. 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.

8. 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.

9. 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 as such 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.

10. From perusal of the record it appears that petitioner has remained in custody since 21/09/2022.

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 the 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 taking into consideration the material on record, I am of the considered opinion that there is possibility of reform in the petitioner 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 criminals. Further taking into consideration the materials on record as well as the period of incarceration of the petitioner and in the best interest of CICL, 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 courts below have 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 dated 22-05-2023 passed in Cr. Appeal No. 21 of 2023 passed by Additional District and Sessions Judge 1st cum Children Court, Bettiah, West Champaran and order dated- 29/03/2023 passed in J.J.B. Case No. 1039 / 2022 by Juvenile Justice Board, West Champaran at Bettiah 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 Juvenile Justice Board, West Champaran at Bettiah /



court concerned in connection with J.J.B. Case No. 1039 / 2022
arising out of Bettiah (Muffasil) PS Case No. 757 of 2022 on
the following conditions:-

*(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, West Champaran at Bettiah 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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