

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL REVISION No.583 of 2022

Arising Out of PS. Case No.-538 Year-2021 Thana- SIWAN MUFFASIL District- Siwan

ARBAZ ALI Son of Hajaratullah @ Vaishali Miyan Resident of Village -
Barhan Gopal, P.S.- Siwan (M), District - Siwan.

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Arbind Kumar Singh

For the Respondent/s : Mr. Ajay Kumar Jha

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

ORAL ORDER

4 24-07-2023 Heard learned Counsel for the petitioner and learned
Additional Public Prosecutor appearing for the State.

2. This appeal has been filed against the judgment and order dated 20.05.2022 passed by learned 1st Additional Sessions Judge -cum- Special Judge, Siwan, in Criminal Appeal No. 25 of 2022. By impugned order, the learned 1st Additional Sessions Judge -cum- Special Judge, Siwan, has affirmed the order, dated 14.03.2022, passed by the J. J. Board, Siwan, in J. J. Board Case No. 388 of 2021, arising out of Muffasil P. S. Case No. 538 of 2021, registered for the offences punishable under Sections 341/323/324/307/302/504/34 of the Indian Penal Code.

3. The prosecution case, as per the First Information



Report, is that, on 26.10.2021, accused persons, including the petitioner, were playing Ludo at the door of the informant. Upon objection being made by the son of the informant, namely, Tazrul Hauque, accused persons started abusing and assaulting him, thereafter, another son of the informant, namely, Abdul Haque, came to the rescue. It has further been alleged that on orders of accused Janta Miya, the petitioner assaulted on the chest of Tazrul Hauque by means of knife and co-accused Saif Ali assaulted on ears and nose of Abdul Hauque by means of knife, due to which both the sons of the petitioner sustained injury and were taken to the hospital, however, Tazrul Hauque died during the course of treatment.

4. Learned Counsel for the petitioner submits that the petitioner was declared juvenile by order, dated 25.01.2022 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 16 years. He next submits that by the impugned order, the learned 1st Additional Sessions Judge -cum- Special Judge, Siwan, has rejected the prayer of the petitioner for bail on erroneous conclusion that there is a possibility that the petitioner would fall into bad company, if released on bail and grant of bail to the



petitioner may cause moral, physical and psychological danger to him. He next submits that learned 1st Additional Sessions Judge -cum- Special Judge, Siwan, 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. Learned Counsel further relied 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 for the petitioner submits that bail to a child in conflict with law is a rule and denial is exception.

9. Learned Counsel for the petitioner, in the aforesaid background, submits that the learned 1st Additional Sessions Judge -cum- Special Judge, Siwan, has failed to consider the scheme of the Act and has committed irregularity in arriving at the conclusion that the petitioner may fall into bad company, if released on bail.

10. Learned Counsel further submits that the father 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.

11. 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 father has given an undertaking to reform his child, i.e. the petitioner, this Court may consider to pass appropriate order in the best interest of the child in conflict with law.

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 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 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 1st Additional Sessions Judge -cum- Special Judge, Siwan, that the petitioner may fall into bad company, is not sustainable in the facts and circumstances of the case.

13. Accordingly, this appeal is allowed and the order dated 20.05.2022, passed by learned 1st Additional Sessions Judge -cum- Special Judge, Siwan, in Criminal Appeal No. 25 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 Juvenile Justice Board, Siwan, in connection with J.J. Board Case No. 388 of 2021, arising out of Muffasil P. S. Case No. 538 of 2021, subject to 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, Siwan,



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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