

THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.589 of 2022

Arising Out of PS. Case No.-324 Year-2021 Thana- CHANDAUTI District- Gaya

MD. MISTER @ MD. MOHIB S/O MD. MASTAN @ MD. MASTAN MIYAN Resident of village- Katari Pahar, P.S.- Chandaوتي, District- Gaya, under the guardianship of his mother namely Nurjahan Khatu, aged about 55 years, wife of Md. Mastan @ Mastan Miyan, Resident of village- Katari Hill, P.S.- Chantaudi, District- Gaya.

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Manish Kumar No. 2, Advocate.

For the Respondent/s : Mr. Madhura Nand Jha, APP

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

5 07-08-2023 Heard Mr. Manish Kumar No. 2, learned Counsel

for the petitioner and Mr. Madhura Nand Jha, learned

Additional Public Prosecutor for the State.

2. This Criminal Revision has been filed against the judgment and order dated 21.7.2022 passed by learned 1st Additional Sessions Judge-cum-Presiding Officer, Children Court, Gaya, in Criminal Appeal (Juvenile) No. 15 of 2022 by which, the learned 1st Additional Sessions Judge-cum-Presiding Officer, has affirmed the order, dated 22.04.2022, passed by learned Principal Magistrate, Juvenile Justice Board, Gaya, in GR. No. 5198 of 2021, Misc. 09/2022 arising out of Chandaوتي P.S. Case No. 324 of 2021, registered for the offences punishable under Section 366-A of the Indian Penal



Code but charge sheet has been submitted under Section 366-A and 376(3) of the Indian Penal Code and Section 6 of the POCSO Act.

3. The allegation against the petitioner is that he kidnapped/abducted 16 years old daughter of the informant for the purpose of marriage and, thereafter, outraged her modesty.

4. Learned Counsel for the petitioner submits that the petitioner was declared juvenile by order dated 22.4.2022 passed by the learned Principal Magistrate, Juvenile Justice Board, Gaya, after coming to the conclusion that the petitioner was minor at the time of alleged occurrence and was aged about 14 years and 02 months. He next submits that by the impugned order, the learned 1st Additional Sessions Judge-cum-Presiding Officer, Children Court, Gaya, has rejected the prayer of the petitioner for bail on erroneous conclusion that it would defeat the ends of justice. He next submits that learned 1st Additional Sessions Judge-cum-Presiding Officer, Children Court, Gaya, did not consider the social investigation report in correct legal perspective and the petitioner is in custody since 17.10.2021

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-Presiding Officer, Children Court, Gaya, 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 and it would defeat the ends of justice. Learned counsel next submits that the petitioner has falsely been implicated in this case due to his marriage in other religion and the victim was in love with the petitioner.

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 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 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 social investigation report which shows that neighbour of the CICL reported to



probation Officer that character and conduct of the CICL is normal, 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 mother of the petitioner is ready to take proper care of the petitioner after his release on bail, the petitioner is in custody since 17.10.2021 and there is no likelihood that the petitioner will fall into association with any known criminal(s). As such, the conclusion arrived at by 1st Additional Sessions Judge-cum-Presiding Officer, Children Court, Gaya, that the petitioner may fall into bad company, is not sustainable in the facts and circumstances of the case.

13. Accordingly, this Criminal Revision is allowed and the order dated 22.4.2022 and 21.7.2022 respectively passed in Criminal Appeal (Juvenile) No. 15/2022 by learned 1st Additional Sessions Judge-cum-Presiding Officer, Children Court, Gaya, and learned Principal Magistrate, Juvenile Justice Board Gaya, in GR 5198 of 2021, Misc. 09/2022 arising out of Chandauti P.S. Case No. 324 of 2021 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 Principal Magistrate, Juvenile Justice Board, Gaya, in Gr. No. 5198 of 2021, Misc. 09/2022 arising out of Chandauti P.S. Case No. 324 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, Gaya, 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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