

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL REVISION No.492 of 2023

Arising Out of PS. Case No.-57 Year-2020 Thana- BIHPUR District- Bhagalpur

ANKIT KUMAR SON OF MUKESH KUMAR @ HIRA KUMAR VILL
SONBARSHA, PS- BIHPUR, DIST- BHAGALPUR

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Amrendra Kumar
For the Respondent/s : Mr. Choubey Jawahar

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

ORAL ORDER

4 18-09-2023 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 07.06.2023, passed by learned 1st Additional Sessions Judge-cum-Special Judge, Children Court, Bhagalpur, in Special Case (Children) No. 14 of 2023, arising out of Bihpur Police Station Case No. 57 of 2020, registered for the offences punishable under Sections 147/148/149/302/504/506 of the Indian Penal Code and Section 27 of the Arms Act.

3. The prosecution case, as per the First Information Report, is that on 15.02.2020, the accused persons, including the



petitioner, armed with deadly weapons, arrived at Diyara. Co-accused Gunjan Kumar fired upon the son of the informant and later on the petitioner assaulted the informant's son by means of axe on his head, due to which he died.

4. Learned Counsel for the petitioner submits that the petitioner was declared juvenile and at the time of alleged occurrence and he was aged about 16 years, 07 months and 19 days. He next submits that by the impugned order, the learned 1st Additional Sessions Judge-cum-Special Judge, Children Court, Bhagalpur, has rejected the prayer of the petitioner for bail on erroneous conclusion that there is a possibility that the bail to the petitioner may cause physical and psychological danger to him which would defeat the ends of justice. He next submits that learned 1st Additional Sessions Judge-cum-Special Judge, Children Court, Bhagalpur, did not consider the social investigation report in correct legal perspective. The petitioner is in custody since 14.02.2023.

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-cum-Special Judge, Children Court, Bhagalpur, has failed to consider the scheme of the Act and has committed irregularity in arriving at the conclusion that the petitioner, if release on bail, may expose him to the physical and psychological danger which would defeat the ends of justice.

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 case of **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 Criminal Procedure Code.

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 as per the Social Background Report, the petitioner is in need of care and protection of his parents/relatives and as per Social Investigation Report, the petitioner, if released on bail, would indulge in agricultural activities with his father. The behaviour of the petitioner is all good. The father and brother of the petitioner had been made accused in this case and his brother is in jail for the last three years. The occurrence had taken place due to land dispute, deceased is uncle of the petitioner and father of the petitioner at level of gram panchayat is taking steps for compromise and at present the atmosphere is peaceful. The



mother of the petitioner is ready to take proper care of the petitioner after his release on bail as such there is no likelihood that bail to the petitioner may expose him to the physical and psychological danger which would defeat the ends of justice. As such, the conclusion arrived at by learned 1st Additional Sessions Judge-cum-Special Judge, Children Court, Bhagalpur, is not sustainable in the facts and circumstances of the case.

13. Accordingly, this revision application is allowed and the order dated 07.06.2023, passed by learned 1st Additional Sessions Judge-cum-Special Judge, Children Court, Bhagalpur, in Special Case No. 14 of 2023, is hereby set aside.

14. Let the petitioner, above named, be released on bail on furnishing bail bond of Rs. 10,000/- (ten thousand) each with two sureties of the like amount each to the satisfaction of learned 1st Additional Sessions Judge-cum-Special Judge, Children Court, Bhagalpur, arising out of Bihpur Police Station Case No. 57 of 2020, 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 1st Additional Sessions Judge-cum-



Special Judge, Children Court, Bhagalpur, 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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