

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.519 of 2023

Arising Out of PS. Case No.-217 Year-2022 Thana- MOUZA HIDPUR District- Bhagalpur

AKASH KUMAR S/o Ajay Kumar @ Ajay Mandal R/o Village-Maheshpur, Koysi Tola, P.S.-Babbarganj, Dist.-Bhagalpur. Under the guardianship of his mother namely Ruby Devi, aged about 50 years, W/o Ajay Mandal @ Ajay Kumar, R/o Maheshpur Ram Mandal Lane Near Kali Asthan, Mirjanhat, Dist.-Bhagalpur.

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Ranjan Kumar Jha

For the Respondent/s : Mr.Nitya Nand Tiwary

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

2 08-08-2023

1. Heard the parties.

2. This Criminal Revision application has been filed against the order dated 16/06/2023 passed in Special Case (Children) No. 28 / 2022 arising out of Mojahidpur (Baburganj) PS Case No. 217 / 2022 by learned Addl. Sessions Judge-I-cum-Special Judge (Children Court), Bhagalpur.

3. As per the FIR, the petitioner called the son of the informant on mobile and told him to receive his dues money and later when he went there he was surrounded by the co-accused persons named in the FIR and the petitioner fired upon him as a result of which he received gun shot injuries in chest and succumbed to the injuries in hospital.

4. Learned counsel for the petitioner submits that the petitioner was declared juvenile by the learned Juvenile Justice



Board, Bhagalpur after coming to the conclusion that the petitioner was minor at the time of alleged occurrence and was aged about 16 years 01 months 21 days. Learned counsel further submits that learned Additional Sessions Judge 1st -cum-Special Judge (Children Court), Bhagalpur by the impugned order arrived at erroneous conclusion that social investigation report of the petitioner shows that father of the petitioner is in judicial custody and he was sentenced for life imprisonment. The petitioner has association with bad company. The environmental society of the petitioner is not good. There seems to be danger to the life of petitioner if he is released on bail. In the order of the learned Special Judge (Children Court), Bhagalpur it has come that the Juvenile Justice Board, Bhagalpur has reported that petitioner fights with other children / inmates in the remand home and petitioner is trying to make his own gang in the remand home. The learned Special Judge has also opined that there are reasonable apprehensions to the life of the petitioner if he is released on bail. The petitioner was actively involved in gruesome murder thus his release on bail in the case would defeat the ends of justice. The release of the petitioner on bail at this stage is not in the best interest of the petitioner in the peculiar facts and circumstances of the case. The court has



apprehension that if petitioner is released on bail there is likelihood of physical and psychological danger to the child. Therefore in the best interest of the child he should remain in custody. The release of the petitioner will not be in his interest because his release is likely to bring him into association with known criminal and also expose him to moral, physical and psychological danger and defeat the ends of justice. Learned counsel further submits that during the course of trial witnesses have turned hostile and have not supported the prosecution case. Learned counsel further submits that the deceased was a veteran criminal and might have been eliminated by his opponents. Learned counsel further submits that informant is not an eye witness to the occurrence.

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. The mother of the petitioner is ready to undertake that she will not allow the petitioner to fall into bad company and shall try to bring change in his behaviour after release on bail.

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 27.06.2022.

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 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 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 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 order passed by Addl. Sessions Judge-I-cum-Special Judge (Children Court), Bhagalpur is 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 impugned order dated 16-06-2023 passed in Special Case (Children) No. 28 / 2022 by Additional Sessions Judge 1st -cum-Special Judge is is



hereby set aside.

15. Let the petitioner, above named, be released on bail on furnishing bail bond of Rs. 10000/- (ten thousand) with two sureties of the like amount each to the satisfaction of learned Additional Sessions Judge- I -cum-Spl. Judge (Children Court), Bhagalpur/Juvenile Justice Board, Bhagalpur in connection with Special Case (Children) No. 28 / 2022 arising out of Mojahidpur (Babuganj) PS Case No. 217 / 2022 on 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, 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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