

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.3624 of 2023**

Arising Out of PS. Case No.-779 Year-2022 Thana- GOPALGANJ TOWN District-
Gopalganj

XXX

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellant	:	Mr.Pankaj Kumar Dubey, Advocate
For the Informant	:	Mr.Thakur Brajesh Singh, Advocate
For the State	:	Mr.Zeyaul Hoda, APP

**CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT**

Date : 08-11-2023

Heard the parties.

2. The present appeal is being preferred against the order dated 13.06.2023 passed by learned Additional Sessions Judge - 1st – cum – Special Judge, Children Act, Gopalganj in connection with Special Case No. 10 of 2023 arising out of Gopalganj Town P.S. Case No. 779 of 2022 by which the learned Court has refused to enlarge the appellant on bail registered for offences punishable under Sections 302, 201, 120(B) of the Indian Penal Code.

3. As per the prosecution story, the informant has alleged that on 22.09.2022 at 10:00 A.M., his villagers namely, Krishna Kumar and Sonu Kumar Yadav had come and they along with his brother had gone towards north side of his house, but his brother did not return till next morning. The informant



further alleged that when he enquired about the whereabouts of his brother, it was found that Krishna Kumar and Sonu Kumar was not present in their house. Subsequently, the dead body of his brother was found lying behind the house of Krishna Kumar and several knife injuries were there in the dead body of the brother of the informant. He alleged that beside the aforesaid two accused persons, other accused persons including the present appellant/juvenile had killed his brother.

4. Learned counsel for the appellant submits that the appellant is named in F.I.R. The allegation against the juvenile is to commit murder of brother of the informant along with other co-accused persons by using knife. However, the appellant/juvenile is in observation home since 30.01.2023.

5. It is submitted by learned counsel appearing on behalf of the appellant/juvenile that even as per F.I.R. where appellant/juvenile is named, save and except suspicion, as being one of the conspirator, nothing appears incriminating against him. It is pointed out that even the allegation of last seen is not available against the appellant/juvenile.

6. It is further submitted that similarly situated accused person namely, Govind Yadav has already granted bail by one of the learned coordinate Bench of this Court through Cr.



Misc. No. 3668 of 2023 vide order dated 20.06.2023. It is submitted that nothing surfaced/recovered against the appellant/juvenile during the course of investigation, which may suggest regarding prima-facie involvement of appellant/juvenile in the alleged occurrence of murder of the brother of the informant. The appellant/juvenile is a man clean antecedent. He next submits that charge sheet has already been submitted in the case and there is no chance that the appellant would tamper with the evidences, if released on bail. It appears from the probation report that out of land dispute, the appellant was named with the present occurrence and the general behaviour of juvenile is normal. From the probation report, nothing can be gathered as to suggest that there is no reformatory scope of juvenile.

7. Learned counsel for the appellant 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”*

8. Learned counsel while 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.

9. 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.

10. 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 appellant would bring him in association with bad elements of society.

11. 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 appellant 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 appellant on bail in the best interest of the child.

12. The Division Bench of this Court in the case of **Lalu Kumar and Ors. Vs. The 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 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 Code of Criminal Procedure.

13. Having regard to the facts and circumstances of the case and taking into consideration the material on record as also the submission of learned counsel for the appellant/juvenile



that charge-sheet has already been submitted in the case and there is no chance that the appellant would tamper with the evidences, if released on bail, I am of the considered opinion that from the report of the Juvenile Justice Board, Gopalganj, it appears that the age of the appellant/juvenile is between 16 to 18 years and further taking into consideration the materials on record as well as the period of incarceration of the appellant and in the best interest of CICL, this Court is of the considered view that the impugned order passed by the court below is not sustainable in the eyes of law inasmuch as the same is not in consonance with the aims and objectives of the Act.

14. In result, I am of the opinion that the learned court below has committed material irregularity in arriving at the conclusion that grant of bail to the petitioner would amount to defeating the ends of justice.

15. Accordingly, the order dated 13.06.2023 passed by learned Additional Sessions Judge - 1st – cum – Special Judge, Children Act, Gopalganj in connection with Special Case No. 10 of 2023 arising out of Gopalganj Town P.S. Case No. 779 of 2022 is hereby set aside.

16. The appeal is allowed.

17. Let the appellant, 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 Additional Sessions Judge - 1st – cum – Special Judge, Children Act, Gopalganj in connection with Special Case No. 10 of 2023 arising out of Gopalganj Town P.S. Case No. 779 of 2022 on the following conditions:-

(i) that one of the bailors shall be the father of the appellant.

(ii) that the father of the appellant shall file an affidavit before the learned Juvenile Justice Board, Gopalganj giving specific undertaking that after release of the petitioner on bail, he will take proper care of the appellant and will not allow him to fall into bad company.

(Chandra Shekhar Jha, J.)

Rajeev/-

AFR/NAFR	
CAV DATE	
Uploading Date	10.11.2023
Transmission Date	10.11.2023

