

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.3587 of 2023**

Arising Out of PS. Case No.-388 Year-2022 Thana- SITAMARHI District- Sitamarhi

XXX

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellant/s : Mr.Vikash Kumar Jha, Advocate

For the Respondent/s : Mr.Syed Ashfaque Ahmad,. 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 06.07.2023 passed by learned Additional District & Sessions Judge-1-cum-Special Judge (Children's Court), Sitamarhi in Sitamarhi P.S. Case No. 388 of 2022 by which the learned Court has refused to enlarge the appellant on bail registered for offences punishable under Sections 30(A) of the Bihar Prohibition and Excise Act.

3. The case of the prosecution in brief is that informant of this case received an information that at Mehsaul Ward No. 05, one person namely, Md. Chand was doing business of illegal wine at his house. Thereafter, the informant and other police personnel reached there and raided his house and apprehended the accused person. On search of the house, a



black coloured bag containing 15.12 liters of illicit liquor was recovered.

4. Learned counsel for the appellant/juvenile submits that the appellant is named in F.I.R., and he is in observation home since 15.09.2022. Learned counsel further submits that the learned Juvenile Justice Board, Sitamarhi, vide order dated 17.11.2022, declared the appellant being a child in conflict with law after assessing his age to be around 17 years 07 months and 28 days on the alleged date of occurrence.

5. Learned counsel for the appellant/juvenile further submits that the appellant was found involved in illegal activities of storing illicit liquor, where on raid 15.12 liters of liquor was recovered from his house.

6. It is submitted that the alleged recovery appears to be made from the house of the appellant/juvenile, which is also occupied by his parents, and as such, it cannot be said that the recovery was made from his conscious physical possession. It is further submitted that the seizure list also appears doubtful being not supported by independent witnesses.

7. It is further submitted by learned counsel that the probation report shows mixed kind of reaction and there is nothing on record which may suggest that the reform of juvenile



is impossible. It is further pointed out that the appellant/juvenile was found involved in four more criminal cases and out of such cases arises from the criminal incidents without having connecting materials named in the present case also.

8. While concluding argument, learned counsel submits that charge sheet has already been submitted in the case and there is no chance that the appellant/juvenile would tamper with the evidence, if released on bail.

9. Learned counsel for the appellant/juvenile 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”*

10. 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.

11. 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.

12. 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.

13. 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.

14. From perusal of the record, it appears that



appellant/juvenile has remained in observation home since 15.09.2022.

15. 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.

16. Having regard to the submissions made by the parties and taking into consideration the materials available on record 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.

17. In the 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 appellant/juvenile would amount to defeat the ends of justice.

18. Accordingly, the order dated 06.07.2023 passed



by learned Additional District & Sessions Judge–1–cum
-Special Judge (Children’s Court), Sitamarhi in connection with
Sitamarhi P.S. Case No. 388 of 2022 is hereby set aside.

19. The appeal is allowed.

20. Let the appellant/juvenile, 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 District & Sessions Judge–1–
cum -Special Judge (Children’s Court), Sitamarhi in connection
with Sitamarhi P.S. Case No. 388 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, Sitamarhi 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

