

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.3713 of 2023**

Arising Out of PS. Case No.-455 Year-2021 Thana- BUXAR MUFFSIL District- Buxar

XXX

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellant/s : Ms.Dimpal Kumari, Advocate
For the Respondent/s : Mr.Abhay Kumar, 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 11.07.2023 passed by learned A.D.J. - 1st -cum-Special Judge (SC/ST & Children Court), Buxar in connection with Adult Children Trial Case No. 6 of 2023 arising out of Buxar Muffasil P.S. Case No. 455 of 2021 by which the learned Court has refused to enlarge the appellant on bail registered for offences punishable under Sections 302, 120B and 34 of the Indian Penal Code and Section 27 of the Arms Act.

3. The allegation against the appellant/juvenile is to commit murder of son of the informant along with other co-accused persons.

4. Learned counsel for the appellant submits that the appellant is not named in F.I.R., and he is in observation home



since 04.01.2022. Learned counsel further submits that the appellant was declared juvenile by the learned Juvenile Justice Board, Buxar. In the social investigation report, which is part of the impugned order itself, nowhere reflects that there is no any reformatory scope of juvenile in conflict with law.

5. Learned counsel appearing on behalf of the appellant/juvenile submits that the name of the appellant/juvenile surfaced in this case out of suspicion arising from the confessional statement of co-accused namely, Vikash Kumar Yadav, in furtherance of which, no incriminating material has been recovered/surfaced during the course of investigation as to connect appellant in the present occurrence of murder. It is pointed out that said co-accused Vikash Kumar Yadav has already granted bail by one of the learned coordinate Bench of this Court in Cr. Misc. No. 27460/2022 vide order dated 14.09.2022.

6. It is further pointed out by learned counsel that the appellant has been found involved in six more criminal cases where he is on bail and in maximum of cases, his name surfaced out of suspicion on the basis of confessional statement as of the present case.

7. While concluding argument, learned counsel



submits that investigation in this case has been completed and as such there is no chance of tampering with the evidence, if the appellant/juvenile released on bail.

8. 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”*

9. 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.

10. 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.

11. 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.

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. 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/juvenile on bail in the best interest of the child.

14. Learned A.P.P. further submitted that the social investigation report suggest that the appellant/juvenile found involved in several criminal cases as also submitted by learned counsel appearing on behalf of the appellant, and the report is not appearing favourable to juvenile/appellant, but fairly conceded that from perusal of the impugned order, as discussed, nowhere reflects that there is no reformatory scope of juvenile in issue.

15. Having regard to the submissions made by the parties and taking into consideration the material on record, I am of the considered opinion that the name of the appellant/juvenile surfaced in this case out of suspicion arising from the confessional statement of co-accused namely, Vikash



Kumar Yadav. Further, taking into consideration the materials on record as well as the period of incarceration of the appellant/juvenile 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.

16. 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.

17. Accordingly, the order dated 11.07.2023 passed by learned A.D.J. - 1st -cum- Special Judge (SC/ST & Children Court), Buxar in connection with Adult Children Trial Case No. 6 of 2023 arising out of Buxar (Muffasil) P.S. Case No. 455 of 2021 is hereby set aside.

18. The appeal is allowed.

19. 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 A.D.J. - 1st -cum- Special Judge (SC/ST & Children Court), Buxar in connection with Adult Children Trial Case No.



6 of 2023 arising out of Buxar (Muffasil) P.S. Case No. 455 of 2021 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, Buxar 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
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