

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.586 of 2023**

Arising Out of PS. Case No.-1 Year-2023 Thana- ISMAILPUR District- Bhagalpur

AMAR KUMAR @ A.K. SON OF NANDLAL YADAV @ NAND
KISHORE YADAV UNDER THE GUARDIANSHIP OF HIS FATHER
NANDLAL YADAV @ NAND KISHORE YADAV, RESIDENT OF
VILLAGE - BABUPUR, P.S. - SABOUR, DISTRICT - BHAGALPUR

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Pravin Kumar Sinha
For the Respondent/s : Mr.Syed Mojibur Rahman

**CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER**

3 25-09-2023 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 10.07.2023, passed by learned 1st Additional Sessions Judge -cum- Special Judge, Children Court, Bhagalpur, in Criminal Appeal No. 38 of 2023. By impugned order, the learned 1st Additional Sessions Judge -cum- Special Judge, Children Court, Bhagalpur, has affirmed the order, dated 03.05.2023, passed by the Juvenile Justice Board, Bhagalpur, in Ismailpur Police Station Case No. 01 of 2023, registered for the offences punishable under Sections 392/411 of the Indian Penal Code.

3. The prosecution case, as per the First Information



Report, is that two unknown criminals, aged about 25 to 30 years, have looted the tractor of the informant, loaded with 200 bags of urea and also the mobile phone of the informant.

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. 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 petitioner will again fall in bad company, if released on bail. 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. He further submits that the petitioner is not named in the First Information Report and his name has transpired in this case on the basis of confessional statement of co-accused person and the petitioner is in custody since 06.04.2023.

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 will again fall in bad company, if released on bail.

9. Learned Counsel further submits that the father 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 father 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 *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 Code of Criminal Procedure, 1973.

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 and the father 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 will fall in the company of bad boys. Accordingly, 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 10.07.2023, passed by learned 1st Additional



Sessions Judge -cum- Special Judge, Children Court, Bhagalpur, in Criminal Appeal No. 38 of 2023, as well as order, dated 03.05.2023, passed by the Juvenile Justice Board, Bhagalpur, in Ismailpur Police Station Case No. 01 of 2023, are hereby set aside.

14. Let the petitioner, 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 Juvenile Justice Board, Bhagalpur, in Ismailpur Police Station Case No. 01 of 2023, subject to the following conditions:-

(i) that one of the bailors shall be the father of the petitioner;

(ii) that the father 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, he will take proper care of the petitioner and will not allow him to fall into bad company.

(Anil Kumar Sinha, J.)

Prabhakar Anand/-

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