

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.618 of 2023

Arising Out of PS. Case No.-61 Year-2021 Thana- MAHILA P.S. District- Patna

RAHUL KUMAR S/O AMAR NATH MOHALLA- RAM NAGAR, AIIMS
ROAD, P.S. PHULWARI SHARIF, DIST- PATNA

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Manish Jha

For the Respondent/s : Mr. Md. Ataur Rahman

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

ORAL ORDER

2 18-09-2023 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 05.03.2022, passed by learned 1st Additional District and Sessions Judge-cum-Special Judge, Children Court, Patna, in Criminal Appeal No. 10 of 2022. By impugned order, the learned 1st Additional District and Sessions Judge-cum-Special Judge, Children Court, Patna, has affirmed the order, dated 03.01.2022, passed by the Juvenile Justice Board, Patna, in Juvenile Justice Board No. 331 of 2021, arising out of Mahila Police Station Case No. 331 of 2021, registered for the offences punishable under Sections 376(D) of the Indian Penal Code.

3. The prosecution case, as per the First Information



Report, is that the informant was acquainted with the petitioner for about 2-3 months. On 15.06.2021, the petitioner called the informant on her mobile phone, asked to meet him and took her to hotel in front of AIIMS, Patna. It has further been alleged that the petitioner, along with co-accused Nishant Kumar, raped the informant.

4. Learned Counsel for the petitioner submits that the petitioner was declared juvenile by order, dated 03.01.2022, passed by the learned Juvenile Justice Board, Patna, after coming to the conclusion that the petitioner was minor at the time of alleged occurrence and was aged about 17 years and 03 months. He next submits that by the impugned order, the learned 1st Additional District and Sessions Judge-cum-Special Judge, Children Court, Patna, has rejected the prayer of the petitioner for bail on erroneous conclusion that there is a possibility that the petitioner, if released on bail, would fall into bad company or would fall into association with any known criminal(s) and/or grant of bail to the petitioner may cause moral, physical and psychological danger to him which would defeat the ends of justice. He next submits that learned 1st Additional District and Sessions Judge-cum-Special Judge, Children Court, Patna, did not consider the social investigation



report in correct legal perspective. The petitioner is in custody since 17.06.2021. The co-accused, namely, Nishant Kumar, has been acquitted from the alleged offences *vide* judgement, dated 12.07.2023, passed by learned Additional Sessions Judge-I, Patna in Sessions Trial No. 811 of 2021.

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 District and Sessions Judge-cum-Special Judge, Children Court, Patna , has failed to consider the scheme of the Act and has committed irregularity in arriving at the conclusion that the petitioner, if release on bail, may fall into bad company and/or he may expose to the moral, physical or psychological danger which would defeat the ends of justice.

9. Learned Counsel further submits that the mother 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 mother 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 the case of **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 Criminal Procedure Code.

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 as he has got no criminal antecedent 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 will fall into association with any known criminal(s). As such, the conclusion arrived at by learned 1st Additional District and Sessions Judge-cum-Special Judge, Children Court, Patna, that the petitioner may fall into bad company and/or he may expose to the moral, physical or psychological danger, is not sustainable in the facts and circumstances of the case.

13. Accordingly, this revision application is allowed and the order, dated 05.03.2023, passed by learned 1st Additional District and Sessions Judge-cum-Special Judge, Children Court, Patna, in Criminal Appeal No. 10 of 2022 and order, dated 03.01.2022, passed by learned Juvenile Justice Board, Patna in Juvenile Justice Board No. 331 of 2021, are hereby set aside.

14. Let the petitioner, above named, be released on bail on furnishing bail bond of Rs. 10,000/- (ten thousand) each with two sureties of the like amount each to the satisfaction of learned Juvenile Justice Board, Patna, in connection with Juvenile Justice Board No. 331 of 2021, arising out of Mahila



Police Station Case No. 61 of 2021, subject to 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, Patna, 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)

ashwani/-

U		T	
---	--	---	--

