

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL REVISION No.778 of 2022

Arising Out of PS. Case No.-186 Year-2021 Thana- THAWE District-
Gopalganj=====

TABIS MIYA @ TABIS ALI S/O SAMIULLAH MIYA Resident of Village-
Miralipur, P.S.- Thawe, District- Gopalganj, represented through the natural
guardian mother namely Afsari Khatoon, wife of Md. Samiullah, Resident of
Village- Miralipur, P.S- Thawe, District- Gopalganj....

... Petitioner/s

Versus

THE STATE OF BIHAR

... Respondent/s

Appearance :

For the Petitioner/s : Mr. Yogesh Chandra Verma, Sr. Adv.
Mr. Vyas Kumar Mishra
For the Respondent/s : Mr. Arun Kumar Singh

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

ORAL ORDER

2 01-06-2023 Heard learned Counsel for the petitioner, learned
Counsel for the informant and learned Additional Public
Prosecutor appearing for the State.

This revision has been filed against the judgment and
order, dated 19.04.2022, passed by learned 1st Additional
Sessions Judge, Gopalganj, in Criminal Appeal No. 16 of 2022,
confirming the order of the Juvenile Justice Board, Gopalganj,
in J. E. No. 25 of 2022, arising out of Thawe Police Station



Case No. 186 of 2021, registered for the offences punishable under Sections 377/511 of the Indian Penal Code and Sections 4/8/18 of the Prevention of Child from Sexual Offences Act, 2012. By the impugned order, the learned 1st Additional Sessions Judge, Gopalganj, has dismissed the bail application.

The prosecution case, as per the First Information Report, is that while the informant was outside her house, the petitioner, along with other co-accused persons, took the informant's son, aged about six years, in a field and committed sodomy.

Learned Senior Counsel for the petitioner submits that the petitioner was declared juvenile by order, dated 21.01.2022 passed by the learned Special Judge, POCSO, Gopalganj, after coming to the conclusion that the petitioner was minor at the time of alleged occurrence and was aged about 14 years and 10 months. He next submits that by the impugned order, the learned 1st Additional Sessions Judge, Gopalganj, has rejected the prayer of the petitioner for bail on erroneous conclusion that the petitioner has committed the offence due to indifference of his parents, bad company and if he is released on bail, the same would cause miscarriage of justice. He next submits that learned 1st Additional Sessions Judge, Gopalganj, did not consider the



social investigation report in correct legal perspective.

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”

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.

Learned Counsel further relied upon Section 12 of the Act, which is quoted as follows:-

“12. Bail to a person who is apparently a child alleged to be in conflict with law.- (1) When any person, who is apparently a child and is alleged to have committed a bailable or non-bailable offence, is apprehended or detained by the police or appears or brought before a Board, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, be released on bail with or without surety or placed under the supervision of a probation officer or under the care of any fit person:

Provided that such person shall not be so released if there appears reasonable grounds for believing that the release is likely to bring that person into association with any known criminal or expose the said person to



moral, physical or psychological danger or the person's release would defeat the ends of justice, and the Board shall record the reasons for denying the bail and circumstances that led to such a decision.

(2) When such person having been apprehended is not released on bail under subsection (1) by the officer - in-charge of the police station, such officer shall cause the person to be kept only in an observation home in such manner as may be prescribed until the person can be brought before a Board.

(3) When such person is not released on bail under sub-section (1) by the Board, it shall make an order sending him to an observation home or a place of safety, as the case may be, for such period during the pendency of the inquiry regarding the person, as may be specified in the order.

(4) When a child in conflict with law is unable to fulfil the conditions of bail order within seven days of the bail order, such child shall be produced before the Board for modification of the conditions of bail.”

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.

Learned Counsel in the aforesaid background, submits



that the learned 1st Additional Sessions Judge, Gopalganj, has failed to consider the scheme of the Act and has committed irregularity in arriving at the conclusion that there shall be failure of justice, if the petitioner is released on bail.

Learned Counsel further submits that the petitioner is in judicial custody since 17.01.2022 and the mother of the petitioner is ready to take proper care of him after released on bail and shall not allow him to fall into bad company and would try to bring change in his behaviour, if required.

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, this Court may consider to pass appropriate order in the best interest of the child in conflict with law.

Having regard to the submissions made by the parties, on perusal of the impugned order and taking into consideration the social investigation report, 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 and 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 Sessions Judge, Gopalganj, is not sustainable in the facts and circumstances of the case.

Accordingly, this revision is allowed and the order dated 19.04.2022, passed, by learned 1st Additional Sessions Judge, Gopalganj, in Criminal Appeal No. 16 of 2022, confirming the order of the Juvenile Justice Board, Gopalganj, in J. E. No. 25 of 2022, arising out of Thawe Police Station Case No. 186 of 2021, is hereby set aside.

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, Gopalganj, in connection with J. E. No. 25 of 2022, arising out of Thawe Police Station Case No. 186 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, Gopalganj, 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)

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