

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL REVISION No.883 of 2022

Arising Out of PS. Case No.-479 Year-2021 Thana- GAYA MUFASIL District- Gaya

ARYAN KUMAR @ PIKWA @ SATYENDRA KUMAR Son of Baijnath Paswan R/o Manpur Gandhi Nagar, P.S.- Muffasil, District- Gaya under the guardianship of his mother Mahangi Devi, W/o Baijnath Paswan, Resident of Manpur Gandhi Nagar, P.S.- Muffasil, District- Gaya

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Vinod Kumar

For the Respondent/s : Mr. Sanjay Kumar Tiwary

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

6 19-09-2023 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 19.09.2022, passed by learned 1st Additional Sessions Judge-cum-P.O., Children Court, Gaya, in Juvenile Trial No. 07 of 2022, arising out of Muffasil Police Station Case No. 479 of 2021/G.R. No. 4670 of 2021, registered for the offences punishable under Sections 302/120/34 of the Indian Penal Code and Section 27 of the Arms Act.

3. The prosecution case, as per the First Information Report, is that the co-accused Himanshu Kumar (cousin son-in-law), in drunken condition, came to informant's house and took



her wife and child with him to his house. After some time the co-accused Himanshu Kumar, along with two persons, again came and took the informant's son with him. The informant, at 04:30 PM, came to know that his son has been shot dead. It has further been alleged that the co-accused Himanshu Kumar, along with the petitioner and others, has murdered the informant's son by means of fire arms.

4. Learned Counsel for the petitioner submits that the petitioner was declared juvenile and at the time of occurrence he was aged about 16 years, 06 months and 11 days. He next submits that by the impugned order, the learned 1st Additional Sessions Judge-cum-P.O., Children Court, Gaya, 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 association with any known criminal(s). He next submits that learned 1st Additional Sessions Judge-cum-P.O., Children Court, Gaya, did not consider the social investigation report in correct legal perspective. The petitioner is in custody since 11.12.2021.

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 Sessions Judge-cum-P.O., Children Court, Gaya, 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 association of known criminal.

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 material on record, I am of the considered opinion that there is possibility of reform in the petitioner. The gravity and seriousness of the offence is not one of the consideration for refusal of bail to the juvenile 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 Sessions Judge-cum-P.O., Children Court, Gaya, that the petitioner may fall into association of known criminals is not sustainable in the facts and circumstances of the case.



13. Accordingly, this revision application is allowed and the order, dated 19.09.2022, passed by learned 1st Additional Sessions Judge-cum-P.O., Children Court, Gaya, in Juvenile Trial No. 07 of 2022, is 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 1st Additional Sessions Judge-cum-P.O., Children Court, Gaya, in connection with Juvenile Trial No. 07 of 2022, arising out of Muffasil Police Station Case No. 479 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 1st Additional Sessions Judge-cum-P.O., Children Court, Gaya, 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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