

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.913 of 2022

Arising Out of PS. Case No.-69 Year-2021 Thana- ANDHRAMATH District- Madhubani

ARVIND KUMAR YADAV Son of Devendra Yadav Resident of village - Rauahi, P.S.- Andhramath, District - Madhubani. Under guardianship brother of petitioner namely - Surendr Kumar Yadav (M) aged about 23 y S/o Devendra Yadav @ Devendra Prasad Yadav Resident of village - Rauahi, P.S.- Andhramath, Distt.- Madhubani.

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Hriday Narayan Harshit, Adv.

For the Respondent/s : Mr. Zainul Abedin, APP

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

3 01-08-2023 Heard Mr. Hriday Narayan Harshit, learned counsel for revisionist/petitioner and Mr. Zainul Abedin, learned APP for the State.

2. The present Cr. Revision application has been filed against the judgment and order dated 10.05.2022 passed in Cr. Appeal No. 03/2023 by the learned 1st Additional Sessions Judge, Madhubani along with order dated 25.11.2021 passed by Juvenile Justice Board, Madhubani in connection with GR No. 1088/2021 arising out of Andhramath PS Case No. 69/2021 for the offence punishable under Sections 302/34 of the IPC whereby and whereunder both the learned courts below have refused to release the revisionist/petitioner on bail.

3. The allegation as narrated in the FIR by the



informant is that on 25.06.2021 at 8:00 PM, her husband after taking supper had gone to guard his mango orchard and did not return in the same night. On the next day, during course of search, when she reached to the orchard, she found that her husband was bludgeoned to death. She further disclosed that threatening of death of her husband was earlier given by the FIR named accused persons. It is also alleged that she has got strong suspicion that these accused persons have killed her husband due to land dispute.

4. Learned counsel for the petitioner submits that the petitioner/revisionist has not committed any offence in the manner alleged. He next submits that both the parties are agnates and there is longstanding land dispute between them and all the family members of the petitioners have been made accused except the elder brother of the CICL. He further submits that other accused persons, namely, Siya Devi and Kailash Kumar Yadav have already been granted bail by the Co-ordinate Benches of this Court *vide* Cr. Misc. No. 64650/2021 and Cr. Misc. No. 32479/2022 respectively. He further submits that the findings arrived at by the learned appellate courts for rejection of the bail application are based upon no material who by impugned judgment arrived at an erroneous conclusion on



the basis of observation made by JJB that since all the family members of the CICL are under custody, his life may be at stake at the end of adversary, hence, it will not be in the interest of CICL, if he is released on bail. It has next been submitted that the learned court below has passed the impugned order mechanically and without application of judicial mind. He next submits that the petitioner is in judicial custody since 27.06.2021.

5. Learned counsel has placed reliance upon Sections 3 (i) (iv) (v) and (xiv) of Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as 'the Act') which are 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.

6. Learned counsel, 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 in the Act.

7. Learned counsel further relies upon Section 12 of the Act which is 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 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 sub-section (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 maybe, 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 fulfill 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.

8. 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 an exception.

9. 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 grant of bail to the petitioner would not be in his interest.

10. 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 petitioner and denial is an exception, this Court may consider to pass an appropriate order in accordance with the provisions of the Act.

11. From perusal of the records, it appears that petitioner is in custody since 27.06.2021.

12. Having regard to the submissions made by the parties and taking into consideration the material on record and



the fact that the elder brother of the petitioner is ready to undertake the responsibility of CICL and both the parties are agnates and the petitioner is in protective custody since long, this Court is of the considered view that the impugned judgment and order passed by both the courts below are not sustainable in the eyes of law inasmuch as they are not consistent with the aims and objects of the Act.

13. Accordingly, the judgment and order dated 10.05.2022 passed in Cr. Appeal No. 03/2023 by the learned 1st Additional Sessions Judge, Madhubani along with order dated 25.11.2021 passed by Juvenile Justice Board, Madhubani in connection with GR No. 1088/2021 arising out of Andhramath PS Case No. 69/2021 for the offence punishable under Sections 302/34 of the IPC are hereby, set aside and the revisionist/petitioner, **Arvind Kumar Yadav** is directed to 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, Madhubani in connection with GR No. 1088/2021 arising out of Andhramath PS Case No. 69/2021 subject to the following conditions:-

(1) One of the bailors will be the elder brother of the petitioner.



(2.) Elder brother of the petitioner shall file an affidavit before the learned Juvenile Justice Board, Madhubani giving specific undertaking that after release of the petitioner/juvenile on bail, he will take proper care of the petitioner and will not allow him to fall into bad company.

14. With the aforesaid observation and direction, the instant application is allowed.

(Anil Kumar Sinha, J)

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