

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.40 of 2023

Arising Out of PS. Case No.-434 Year-2022 Thana- GAYA MUFASIL District- Gaya

ANKIT KUMAR @ ANKIT SINGH Son of Sanjay Singh R/v- Surhari, P.S.-
Muffasil, District- Gaya

... .. Petitioner/s

Versus

1. The State of Bihar
2. SHOBHA DEVI Wife of Ram Pravesh Kumar R/v- Lakhanpur, P.S.-
Muffasil, District- Gaya

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Rahul Kumar, Adv.
For the Respondent/s : Mr. Jharkhandi Upadhyay, APP

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

4 01-06-2023 Heard Mr. Rahul Kumar, learned counsel for
revisionist/petitioner and Mr. Jharkhandi Upadhyay, learned
APP for the State.

2. The present Cr. Revision application has been filed
against the judgment and order dated 15.12.2022 passed in Cr.
Appeal (Juvenile) No. 07/2022 by the learned Special Judge
(Child Court), Gaya as well as order dated 28.09.2022 passed by
learned Juvenile Justice Board, Gaya, in connection with
Mufassil PS Case No. 434/2022 under Section 302, 120(B)/34
of the IPC and under Section 27 of the Arms Act whereby and
whereunder both the learned court below have refused to release
the revisionist/petitioner on bail.



3. The allegation, as per First Informant Report, is that on 29.06.2022 at about 6:00 PM, the son of the informant had gone to the market and when he did not return after one and a half hour, the informant started looking for him and during course of search, one Gaurav Kumar disclosed that her son, Harsh Kumar has been shot dead. It has also been alleged in the FIR that the son of the informant was in love affair with daughter of one Sanjay Singh and she has strong suspicion that his son has been killed by father, brother and mother of the girl, namely, Anjani Kumari @ Jiya with whom, her son was in love.

4. Learned counsel for the petitioner submits that petitioner, against order passed by Juvenile Justice Board, Gaya refusing the bail application, preferred an appeal bearing Cr. Appeal (Juvenile) No. 07/2022 before the learned court of Special (Children Court), Gaya who by impugned judgment arrived at an erroneous conclusion that release of the juvenile from the protective custody would defeat the ends of justice. Learned counsel next submits that one of the named co-accused, Anjani Kumari @ Jiya, with whom the deceased was, allegedly, in love, has been granted bail by the Juvenile Justice Board, Gaya itself *vide* its order dated 06.09.2022 (Annexure-4). It has further been submitted that another FIR named co-accused,



namely, Rinku Devi (mother of the petitioner) has been granted bail by a Co-ordinate Bench of this Court in Cr. Misc. No. 57870/2022 *vide* order dated 03.02.2023. It has next been submitted that charge-sheet has been submitted and there is no likelihood that petitioner would abscond or tamper with the evidences and he is in custody since 02.08.2022.

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 for the petitioner, in the aforesaid backdrop, 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 offence committed by CICL showed criminal proclivities and criminal psychology if released on bail, then it would defeat the ends of justice. Social investigation report shows that behaviour of CICL is good and petitioner has been made accused on the basis of suspicion along with his entire family members.

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 and in view of the fact that mother and sister of the petitioner have been granted bail, this Court may consider to pass an appropriate order in accordance with the scheme of the Act.

11. Having regard to the submissions made by the parties and taking into consideration the material on record and the fact that the two FIR named accused have been granted bail by J. J. Board, Gaya itself and another by a Bench of this Court respectively, there was no material before the learned lower court to come to the conclusion that the release of the petitioner would defeat the ends of justice and it merely confirmed the order passed by the J.J. Board, Gaya, therefore, in my considered view, the impugned judgment and order passed by both the court below are not sustainable in the eyes of law.

12. Accordingly, judgment and order dated 15.12.2022 passed in Cr. Appeal (Juvenile) No. 07/2022 by the learned Special Judge (Child Court), Gaya as well as order dated 28.09.2022 passed by learned Juvenile Justice Board, Gaya, are hereby, set aside and the revisionist/petitioner, ANKIT KUMAR @ ANKIT SINGH 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, Gaya, in connection with
Mufassil PS Case No. 434/2022.

13. With the aforesaid observation and direction, the
instant application stands allowed.

(Anil Kumar Sinha, J)

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