

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.296 of 2024

Arising Out of PS. Case No.-189 Year-2023 Thana- MUNGER MUFFASIL District- Munger

Nishant Kumar son of not given under the natural guardianship of his mother namely Rita Devi, Female, aged about -34 years, Wife of Jyotish Yadav, Resident of Village- Bank, P.S.- Muffasil, District- Munger

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Munish Kumar, Advocate
	:	Ms. Minakshi Kumar, Advocate
	:	Mr. Munna Raj, Advocate
For the Respondent/s	:	Mr.Shailendra Kumar

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

- 2 28-05-2024 1. Heard learned Counsel for the petitioner and learned Additional Public Prosecutor appearing for the State.
2. This revision application has been filed against the order dated 14.03.2024, passed by learned Additional Sessions Judge-1st, Munger in Criminal Appeal No. 03 of 2024. By impugned order, the learned Additional Sessions Judge-1st, Munger has affirmed the order dated 29.01.2024, passed by the learned Principal Magistrate, Juvenile Justice Board, Munger in J.J.B. Case No. 137 of 2023, arising out of Mufassil Police Station Case No. 189 of 2023, registered for the offences punishable under Sections 147, 148, 149, 324, 307, 302, 504, 506 of the Indian Penal Code and Section 27 of



Arms Act.

3. The prosecution case, in brief, as per the First Information Report, is that petitioner and others being armed with rifle, katta and sword, surrounded the informant and his brother-in-law and threatened them regarding the case, which was filed by informant's side against co-accused persons. It is further alleged that the petitioner and others caught hold the informant's brother-in-law and co-accused Jairaj Gautam fired from his rifle which hit his arm, thereafter co-accused Praveen Kumar fired from countrymade katta, which hit the chest of informant's brother-in-law. It is also alleged that the informant's mother came to rescue him then co-accused Navin Kumar inflicted sword blow on her neck and she sustained injury

4. Learned counsel for the petitioner submits that the petitioner was declared juvenile by order dated 15.12.2023 passed by the learned Principal Magistrate, Juvenile Justice Board, Munger after coming to the conclusion that the petitioner was minor at the time of alleged occurrence. He next submits that by the impugned order, the learned Additional Sessions Judge-1st, Munger has rejected the prayer of the petitioner for bail on erroneous conclusion that in case,



the petitioner be granted bail, there is every apprehension of his psychological and moral danger and that his release may also defeat the ends of justice. He also submits that there is no adverse remarks against the petitioner in the social investigation report. The petitioner is in custody since 13.07.2023.

5. Learned Counsel relies upon ***Sections 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:-

“ 3(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.

3 (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.

3 (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.

3 (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 Principal Magistrate, J.J.B., Munger and learned appellate court have failed to consider the scheme of the Act and have committed irregularity in arriving at the conclusion that in case, the petitioner be granted bail, there is every apprehension of his psychological and moral danger and that his release may also 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) and/or he may expose to the moral, physical or psychological danger which would defeat the ends of justice. As such, the conclusion arrived at by learned Additional Sessions Judge-1st, Munger 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 14.03.2024, passed by learned Additional Sessions Judge-1st, Munger in Criminal Appeal No. 03 of 2024, is hereby set aside.

14. 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 Principal Magistrate, J.J.B., Munger, in J.J.B. Case No. 137 of 2023, arising out of Mufassil Police Station Case



No. 189 of 2023, 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, Munger, 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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