

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.495 of 2024

Arising Out of PS. Case No.-81 Year-2022 Thana- MAHILA PS District- Gaya

ARVIND KUMAR S/O SHANKAR YADAV R/O VILLAGE- NIMA, P.S-
GURUA, DISTT.- GAYA UNDER GUARDIANSHIP OF HIS FATHER
NAMESLY SHANKAR YADAV, RESIDENT OF VILLAGE- NIMA, P.S-
GURUA, DISTT.- GAYA.

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR BIHAR
2. PRABUDH CHATERJEE S/O DEOVART CHATOPADHAY R/O KERK
VIEW K.G. SCHOOL SOUTH GANDHI MAIDAN CHURCH ROAD, P.S-
CIVIL LINES, GAYA.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Shivendra Prasad
For the Respondent/s : Mr.Akshay Lal Pandit

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

6 04-10-2024 1. Heard the parties.

2. The petitioner in the present case has prayed for setting aside the judgment and order dated 19.04.2023 passed by learned Special Judge (Children Court), Gaya in Juvenile Appeal No. 05 / 2023 as well as the order dated 10.02.2023 passed by learned Principal Magistrate, Juvenile Justice Board, Gaya in Misc. Case No. 475 of 2022 whereby the prayer for bail of the petitioner was rejected in connection with Mahila P.S. Case No. 81 of 2022 registered for the offence punishable under Sections 376 / 376(AB) / 376 (D) / 376(DB) of the I.P.C. and Section 4/6 of the Protection of Children from Sexual Offences



Act, 2012.

3. This is second attempt for bail inasmuch as earlier the petitioner had moved before this Court for bail in Cr. Revision No. 399 / 2023 which was dismissed on 19.09.2023 with liberty to the petitioner to renew his prayer for bail after six months from the date of order.

4. As per prosecution case two persons committed sexual harassment with the victim, who is a minor girl aged about 04 years, in course of carrying the girl on school Van. The victim identified the co-driver of the Van namely, Satyendra Yadav and the Khalasi- Arvind Kumar (i.e. petitioner).

5. Learned counsel for the petitioner submits that the petitioner was declared juvenile by the learned Juvenile Justice Board, Gaya after coming to the conclusion that the petitioner was minor at the time of alleged occurrence and was aged about 15 years 05 months 13 days. He submits that the learned Special Judge (Children Court), Gaya by the impugned order arrived at erroneous conclusion that paragraph no. 42 of the social investigation report shows intention and active role of the CICL and paragraph no. 43 shows the reasons of committing the offence. There is lack of proper guidance and lack of morality. He seems to be in bad company. As such, the conduct of the CICL showed



criminal proclivities and criminal psychology. The manner of committing offence and conduct of the CICL shows mature mind. The manner of commission of offence indicates an evil and well planned design which indicates matured skill of an accused than that of an innocent child and his release would also defeat the ends of justice. The release of the petitioner on bail at this stage is not in the best interest of the petitioner in the peculiar facts and circumstances of the case. If he is released from the protective custody, there is likelihood of his going back in the same environment as well as physical and psychological danger to the child. Therefore, in the best interest of the child he should remain in custody. The release of the petitioner will not be in his interest because his release is likely to bring him into association with known criminals and also expose him to moral, physical and psychological danger and defeat the ends of justice. He submits that the petitioner is in custody since 21.09.2022 and the trial is not likely to be concluded in near future. He submits that the petitioner is a student and his confinement under observation home would adversely affect the career of the petitioner.

6. Learned counsel for the petitioner relies upon Section 3 (i), (iv), (v) & (xiv) of the Juvenile Justice (Care and Protection



of Children) Act, 2015 {hereinafter referred to as “the Act”}
which is 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”

7. 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 under the Act.

8. 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.

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 release of the petitioner would bring him in association with bad elements of society. The father of the petitioner is ready to undertake that he will not allow the petitioner to fall into bad company and shall try to bring change in his behaviour after release on bail.

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 exception, as such, this Court may consider to pass appropriate order in accordance with the provisions of the Act for release the petitioner on bail in the best interest of the child.

11. From perusal of the case record it appears that the petitioner has remained in custody since 21.09.2022.

12. A Bench of this Court in a judgment reported in 2019(4)



PLJR 833 Lalu Kumar @ Lalbabu @ Lallu Versus The State of Bihar 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 an application for bail is not decided by reference to classification of offences as bailable or non -bailable under the Cr.P.C.

13. This Court vide order dated 23.08.2024 has called for a report from the learned Special Judge (Children Court), Gaya, regarding the present stage of Mahila P.S. Case No. 81 of 2022 and in pursuance thereto the learned Principal Magistrate, JJB, Gaya vide letter no. 817 dated 13.09.2024 has furnished the report which indicates that out of seven charge sheet witnesses, six witnesses have already been examined and cross examined.

14. Having regard to the submissions made by the parties and taking into consideration the material on record, I am of the considered opinion that there is possibility of reform in the petitioner and the father 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 would fall into association with



any known criminals. Further, taking into consideration the materials on record as well as the period of incarceration of the petitioner and in the best interest of CICL, this Court is of the considered view that the impugned order passed by learned Special Judge (Children Court), Gaya and learned Principal Magistrate, JJB, Gaya are not sustainable in the eyes of law inasmuch as they are not in consonance with the aims and objectives of the Act.

15. In the result, I am of the opinion that the learned courts below have committed material irregularity in arriving at the conclusion that grant of bail to the petitioner would amount to defeating the ends of justice.

16. Accordingly, the impugned judgment and order dated 19.04.2023 passed in Juvenile Appeal No. 05 of 2023 by the learned Special Judge (Children Court), Gaya as well as the order dated 10.02.2023 passed in Misc. Case No. 475 of 2022 by learned Principal Magistrate, Juvenile Justice Board, Gaya are hereby set aside.

17. Let the petitioner, above named, be released on bail on furnishing bail bond of Rs. 10000/- (ten thousand) with two sureties of the like amount each to the satisfaction of learned Juvenile Justice Board, Gaya in connection with Misc. Case No.



475 of 2022 arising out of Mahila P.S. Case No. 81 / 2022 on
the following conditions:-

(i) that one of the bailors shall be the father of
the petitioner.

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

(Anil Kumar Sinha, J)

praful/-

U		T	
---	--	---	--

