

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No. 542 of 2024

Arising Out of PS. Case No.-345 Year-2023 Thana- GOH District- Aurangabad

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Xxxx Juvenile In Conflict With Law S/o Dilip Singh @ Dilip Ram R/o
Village Pema, PS Goh District Aurangabad

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Santosh Kumar Pandey

For the Respondent/s : Mr.Md. Aslam Ansari

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CORAM: HONOURABLE MR. JUSTICE RUDRA PRAKASH MISHRA
ORAL ORDER

3 23-08-2024 Heard learned counsel for the petitioner/revisionist
and learned APP representing the State.

2. The present revision application has been filed by the petitioner/revisionist “XXXX” Child in Conflict with Law (hereinafter to be referred to as “the CICL”) against the order dated 03.06.2024 passed in Cr. App. No. 23 of 2024 by the learned 1st Additional & Sessions Judge, Aurangabad affirming the order dated 02.02.2024 passed in Juvenile Justice Board Case No. 1229 of 2023 arising out of Goh P.S. Case No. 345 of 2023 instituted for offence under Sections 25(1-b)a/26/35 of the Arms Act whereby the Juvenile Justice Board, Aurangabad rejected the bail application of the CICL.

3. The prosecution case, in short, is that on the information made by one Rekha Kumari, the Informant of Goh P.S. Case No. 341 of 2023 at about 3.00 PM, the police reached



at the place of occurrence. It is alleged that on seeing the police, the accused CICL along with other co-accused Raushan Kumar started fleeing away and, on chase, the accused CICL was nabbed. On search, one loaded pistol, one screen touch mobile as well as six thousand rupees were recovered from the possession of the CICL and seven thousand rupees, one screen touch mobile and a Hero Passion Pro motorcycle with key was recovered from the possession of other accused Raushan Kumar and seizure list was prepared.

4. Learned counsel for the petitioner/revisionist submits that the petitioner is innocent and has not committed any offence as alleged in the F.I.R. and has falsely been implicated in the present case merely on the basis of suspicion. He submits that the petitioner was declared juvenile by the J.J.B., Aurangabad holding his age to be 17 years 4 months and 14 days at the time of occurrence. He further submits that the nothing incriminating has been recovered from the conscious possession of the petitioner rather the police mechanically implanted the arms in his waist. There is no compliance of Section 100 of the Cr.P.C. The CICL filed an application for bail before the J.J.B., Aurangabad which was rejected vide order dated 02.02.2024. The petitioner has been remanded in this case



from Goh P.S. Case No. 341 of 2023. He further submits that the adult co-accused Raushan Kumar has already been granted bail by this Court vide order dated 28.02.2024 passed in Cr. Misc. No. 12401 of 2024. There is no compliance of Section 100 of the Cr.P.C. in this case. The petitioner has been sent to observation home on 09.11.2023 and since then, he is there.

5. He further contends that the father of the revisionist, who is the guardian of the revisionist, undertakes that he will take care of the conduct and behaviour of the revisionist and further added that the revisionist will observe good conduct and behaviour in future. He thus submits that the revisionist may be released on bail. He further submits that the present case does not come under the purview of the proviso to Section 12 of the J.J.Act. The CICL has no criminal antecedent on the date of F.I.R. rather he subsequently remanded into another case vide Goh P.S. Case No. 341 of 2023 under Section 392 of the I.P.C. The father of the petitioner has also given an undertaking on Oath for betterment of his child.

6. Learned counsel for the petitioner further submits that parents of the petitioner is ready to keep the CICL in a social conducive atmosphere and will not allow his son to be in company of unlawful element of the society. Learned counsel



for the CICL further submits that the natural guardian/father of the revisionist has given an undertaking that upon release on bail juvenile 'X' will not be permitted to go into contact or association with any known criminal or allowed to be exposed to any moral, physical, or psychological danger and further that the father will ensure that the juvenile will not repeat the offence. Learned counsel for the petitioner further points out that the learned court below, without considering the general principles laid down under Section 3 as well as the mandatory provisions of Section 12 of the J.J.Act, rejected the bail of the Revisionist (CICL).

7. Learned counsel for the Revisionist/CICL has annexed an undertaking given on Oath by the father of the petitioner/revisionist (Annexure-P/4), Paragraph nos. 2 to 4 whereof reads as follows:-

“2. That I undertake to keep my son in a social milieu. Conducive to development of a law abiding citizen and further undertake to keep my son away from anti social aliments of societies.

3. That I also undertake to look after day to day activities of my son and also provide all possible enmity, so that my son will get proper education and will be in society of a person having good moral character and law abiding citizen.

4. That I further undertake to keep my son with love affection and also teach him to



respect all the elders and having love for younger and not indulged in any unlawful activities and will take all possible steps to be groomed as good citizen of state/Nation.”

8. Learned counsel for the State has vehemently opposed the prayer for bail of the petitioner/revisionist.

9. Section 3 of the J.J. Act of 2015 enumerates the general principles to be followed in administration of the Act. It regulates the conduct and behaviour of all persons functioning under the Act. It states that the Central Government, the State Governments, the Board and other agencies, as the case may be, while implementing the provisions of the Act shall be guided by the fundamental principles enumerated in clauses (i) to (xvi). Section 3 reads as follows:-

“3. General principles to be followed in administration of Act. The Central Government, the State Governments, the Board, and other agencies, as the case may be, while implementing the provisions of this Act shall be guided by the following fundamental principles, namely:—

(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.

(ii) Principle of dignity and worth: All human beings shall be treated with equal dignity and rights.

(iii) Principle of participation: Every child shall have a right to be heard and to participate in all processes and decisions affecting his interest and the child's views



shall be taken into consideration with due regard to the age and maturity of the child.

(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.

(vi) Principle of safety: All measures shall be taken to ensure that the child is safe and is not subjected to any harm, abuse or maltreatment while in contact with the care and protection system, and thereafter.

(vii) Positive measures: All resources are to be mobilised including those of family and community, for promoting the well-being, facilitating development of identity and providing an inclusive and enabling environment, to reduce vulnerabilities of children and the need for intervention under this Act.

(viii) Principle of non-stigmatising semantics: Adversarial or accusatory words are not to be used in the processes pertaining to a child.

(ix) Principle of non-waiver of rights: No waiver of any of the right of the child is permissible or valid, whether sought by the child or person acting on behalf of the child, or a Board or a Committee and any non-exercise of a fundamental right shall not amount to waiver.

(x) Principle of equality and non-discrimination: There shall be no discrimination against a child on any grounds including sex, caste, ethnicity, place of birth, disability and equality of access, opportunity and



treatment shall be provided to every child.

(xi) Principle of right to privacy and confidentiality: Every child shall have a right to protection of his privacy and confidentiality, by all means and throughout the judicial process.

(xii) Principle of institutionalisation as a measure of last resort: A child shall be placed in institutional care as a step of last resort after making a reasonable inquiry.

(xiii) Principle of repatriation and restoration: Every child in the juvenile justice system shall have the right to be re-united with his family at the earliest and to be restored to the same socio-economic and cultural status that he was in, before coming under the purview of this Act, unless such restoration and repatriation is not in his best interest.

(xiv) Principle of fresh start: All past records of any child under the Juvenile Justice system should be erased except in special circumstances..

(xv) Principle of diversion: Measures for dealing with children in conflict with law without resorting to judicial proceedings shall be promoted unless it is in the best interest of the child or the society as a whole.

(xvi) Principles of natural justice: Basic procedural standards of fairness shall be adhered to, including the right to a fair hearing, rule against bias and the right to review, by all persons or bodies, acting in a judicial capacity under this Act.”

10. Section 12 of the Juvenile Justice (Care & Protection of Children) Act, 2015 reads 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 (2 of 1974) 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 ¹[or a place of safety, as the case may be] 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 may be, 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 fulfil 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.”

11. This Court is of the view that the provision of Section 12 of the said Act relating to bail shall be taken into consideration, notwithstanding anything contained in the Code of Criminal Procedure, in the touchstone of the principle of presumption of innocence of the child. Thus, granting bail to a CICL is the rule and refusal is an exception.

12. This Court finds that in the case of ***Lalu Kumar @ Lal Babu @ Lallu vs The State of Bihar*** reported in ***2019 (4) PLJR 833***, the Court has held that the gravity and nature of the offence are immaterial for consideration of bail under the Act of 2015 and general principles as stated under Section 3 of the Act of 2015 have to be followed.

13. Having heard the submissions made by the learned counsel for the parties and having perused the materials available on record as also considering the undertaking filed by the natural father/guardian of the petitioner/revisionist coupled with the fact that the adult co-accused having been granted bail by this Court and the present case is not covered by the proviso of Section 12 of the J.J. Act, it appears that both the orders dated 03.06.2024 and 02.02.2024 are not justified in law.



14. Accordingly, the order dated 03.06.2024 passed in Cr. App. No. 23 of 2024 by the learned 1st Additional District & Sessions Judge, Aurangabad and the order dated 02.02.2024 passed by the Juvenile Justice Board, Aurangabad in J.J.B. Case No. 1229 of 2023 arising out of Goh P.S. Case No. 345 of 2023 are here by set aside.

15. In the result, the present revision application stands allowed.

16. Let the petitioner/revisionist, abovenamed, be released on bail on furnishing bail bonds of Rs.10,000/- (Ten thousand) with two sureties of the like amount each to the satisfaction of Court below/concerned Court in connection with J.J.B. Case No. 1229 of 2023 arising out of Goh P.S. Case No. 345 of 2023, subject to following conditions;

(i) The first bailor must be the natural guardian/father of the petitioner/revisionist.

(ii) The second bailor would be the recognized member of the Panchayat or the reputed person of the village.

(iii) The Child-in-Conflict with Law (CICL) shall remain present before the appellate court as well as the J.J. Board as and when required.

(iv) The Probation Officer of the district shall submit



Social Investigation Report (S.I.R.) from time to time before the
concerned court below.

(Rudra Prakash Mishra, J)

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