

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.617 of 2024

In
CRIMINAL APPEAL (SJ) No.1585 of 2024

Arising Out of PS. Case No.-223 Year-2022 Thana- KHAJEKALA District- Patna

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Biswajit Kumar Pandey @ Lalu Kumar Son of Vijay Kumar Pandey R/O
Sadar Gali, Kali Mandir, P.S.- Khajekala, Dist.- Patna.

... .. Petitioner

Versus

The State of Bihar

... .. Respondent

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Appearance :

For the Petitioner	:	Mr. Rabindra Prasad Singh, Advocate
For the State	:	Mr. Chandra Sen Prasad Singh, APP

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CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
CAV JUDGMENT

Date : 04-12-2024

The present criminal revision petition has been preferred by the Petitioner against the impugned judgment dated 01.12.2023 passed by learned Additional District and Sessions Judge Ist-cum-Special Children Court in Criminal Appeal No. 165 of 2023 whereby the appeal filed by the petitioner was dismissed upholding the order dated 20.06.2023 passed by Juvenile Justice Board, Patna City in JJB Case No. 78 of 2023 arising out of Khajekala P.S. Case No. 223 of 2022 registered for the offences punishable under Sections 302, 120(B) read with Section 34 of the Indian Penal Code, Section 27 of the Arms Act and Section 3(i)(r)/3(i)(s)/3(2)(va) of the Scheduled Castes and Scheduled Tribes Act, 1958 by which learned



Juvenile Justice Board, Patna City, rejecting the bail petition of the Petitioner.

2. The prosecution case as emerging from the fardbeyan of the Informant recorded by S.I., Anil Prasad on 19.07.2022 at 19:35 o'clock at Rajeshwar Hospital, Kankarbag, Patna is that on 19.07.2022 at 2:45 PM, her son Rahul Kumar received a phone call on his mobile bearing no. 9128578424 and told the Informant that Golu Kumar was calling him and he was coming back. After some time, Anil Prasad, the brother of the informant sent a message through Pappu Parasad that Rahul Kumar is lying unconscious near Banke Rai Kucha turning. Thereafter, the Informant with her daughter, Neha reached there and saw that her son Rahul Kumar was lying unconscious and he was bleeding from his back. Thereafter, she sent her son to NMCH with the help of local people wherefrom, he was referred to Rajeshwar Hospital for better treatment where he died in the course of the treatment. The informant has claimed that under conspiracy, her son was called by Amit Kumar Pandey @ Golu and Lallu Kumar (Petitioner herein) and was shot dead by them with the help of other friends.

3. Social Investigation Report has been also received from Probation Officer, Patna City vide his letter bearing No.



133 dated 08.04.2023 as per which, neither parents, nor any of his family members are suffering from any mental illness. All of them are healthy. Father of the petitioner has been shown as educated upto Intermediate, mother has been shown as illiterate and she is house wife and sister of the petitioner is a student of Intermediate and petitioner has friendly relationship with his parents and sister and no family member has any criminal antecedents and the petitioner is also respectful to his family members and obedient to his elders. Petitioner is also a Matriculate. Most of the friends of the petitioner are illiterate/literate and probably of criminal nature and the conduct of the petitioner in the society is not satisfactory. The petitioner has been also shown as not having any tendency to flee away from his house and his physical and mental condition is normal. It has been also shown in the Social Investigation Report that as per statement of sister of the victim and some other local people, the deceased had love affairs with sister of one Shalu and on account of this, Shalu with the help of petitioner and Golu Sharma got the deceased killed. There was pressure being exerted by Shalu on the father of the deceased to withdraw the case, failing which he was threatened that he might be killed. After 6 months of death of the deceased, father of the deceased



Devi Chaudhary was killed by Shalu. It is also commented by the Probation Officer that after inquiry, he found that for want of proper upbringing and nature of the petitioner as well as the company of friends being of doubtful criminal nature, the offence has been committed by the petitioner.

4. Learned Juvenile Justice Board, Patna, had rejected the bail petition of the petitioner vide order dated 20.06.2023 holding as follows:-

“Perused the record and heard learned counsel for the juvenile on the point of bail. After seeing the FIR and Social Investigation Report on record, it appears that juveniles are involved in the case on account of bad company. There is a direct allegation in the FIR that juveniles in association with their friends have shot Rahul Kumar dead, who died in course of treatment at hospital. There is a possibility of re-involvement of the juveniles in similar matters. There is also possibility of mental, physical and psychological danger to the juveniles, if they are released on bail. It would also defeat the ends of justice. It appears to be in the interest of justice and best interest of the juveniles that they still remain in reformatory home. Release of the juveniles would not be in the best interest. Hence, the bail petitions of juveniles, namely, Chotu Kumar @ Vikash Kumar and Lallu Kumar @ Viswajeet Kumar are rejected in their best interest.”

5. Being aggrieved by the order passed by learned Juvenile Justice Board, the Petitioner herein preferred Criminal Appeal bearing No. 165 of 2023 before the special Children Court. However, the appeal was also rejected by learned Additional District and Judge-Ist-cum-Special Children Court holding as follows:-

“It appears from the Social Investigation Report on record that most of the friends of the juvenile in conflict with



law are illiterate/literate and probably of criminal nature and their conducts in the society are not satisfactory. There is lack of proper upbringing by the parents of the juvenile and the probable criminal nature of his friends appear to be the reason of the crime committed. It also appears from the Probation Officer that in case of release of the appellant on bail, there is strong possibility of the appellant come into contact with known and unknown criminals creating physical, mental and psychological damage to him. In such situation, release of the appellant on bail would not be in the best interest. It may defeat the ends of justice.

It also appears from the perusal of the record that on the date of occurrence, the juvenile has found to be 14 years 9 months and 13 days old. There is allegation against the juvenile that he has shot dead the son of the informant and his preliminary assessment of his mental and physical capacity to commit the crime under Section 14(3) and 15 of the Juvenile Justice (Care and Protection of Children) Act, 2015 is still to be conducted. The Probation Officer has also recommended in his report for rehabilitation of the juvenile under Section 18(1)(G) of the Juvenile Justice (Care and Protection of Children) Act, 2015. In view of the aforesaid facts, there is possibility of his re-involvement in crime and he needs advice and guidance of psychiatrist, so that he could be away from the contact of anti-social elements.”

6. I heard learned counsel for the petitioner and learned A.P.P. for the State.

7. Learned counsel for the petitioner submits that the impugned judgment is not sustainable in the eye of law. Learned Appellate Court below has erroneously dismissed the appeal on irrelevant consideration. He further submits that the impugned judgment is also based on surmises and conjecture.

8. However, learned A.P.P. for the State defends the impugned judgment submitting that there is no illegality or infirmity in the same and the present petition is, accordingly, liable to be dismissed.



9. Before I consider the rival submissions of the parties, I deem it proper to refer to Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015, which deals with bail to juveniles. Section 12 of the Act 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 subsection (1) by the officer-in-charge of the police station, such officer shall cause the person to be kept only in an observation home '[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 subsection (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.”**

(Emphasis Supplied)

10. From perusal of Section 12 of the J.J. Act, 2015, it clearly emerges that Section 12 of the Act overrides the bail provisions as contained in the Criminal Procedure Act, 1973 or any other law for time being in force. It further emerges that as



per Section 12 of the Act, bail to the Juvenile is a rule and refusal of the same is an exception and Juvenile can be denied bail only on the following grounds:

(i) if there appears reasonable grounds for believing that the release is likely to bring that person into association with any known criminal or

(ii) expose the said person to moral, physical or psychological danger or

(iii) the person's release would defeat the ends of justice.

11. Use of the expression- “such person shall be released on bail” in Section 12(1) of the Act also shows that grant of bail to a juvenile is mandatory unless grounds for denial are present.

12. It also emerges that seriousness of the alleged offence or the age of the juvenile are also no relevant considerations for denial of bail under Section 12 of the J.J. Act. Even a child who has completed or is above the age of 16 years and is alleged to have committed a heinous offence is also entitled to get bail under Section 12 of the Act, 2015. There is no classification whatsoever provided in Section 12 of the Act, 2015 in regard to grant of bail. Section 12 is applicable to all



juveniles in conflict with law without any discrimination of any nature. (Also refer to **Lalu Kumar @ Lal Babu Vs. State of Bihar, 2019 (6) BLJ 2016**)

13. It also emerges that Section 12 of the Act, 2015 is in consonance with the object of the J.J. Act, which intends not to punish juveniles in conflict with law but to reform and rehabilitate them by proper care, protection, development and social reintegration by adopting a child friendly approach in the adjudication and disposal of matters in their best interest. The Act is based on the belief that children are the future of the society and in case they go into conflict with law under some circumstances, they should be reformed and rehabilitated and not punished. No society can afford to punish its children. Punitive approach towards children in conflict with would be self-destructive for the society.

14. The object of the Act manifests not only in the preamble to the Act but also in Section 3 of the Act providing for general principles to be followed in administration of the Act.

15. It also emerges that Reformatory or Observation Home is one of the measures contemplated by our legislature for reforming and rehabilitating the delinquent children. However,



the family of the child in conflict with has been considered by the legislature as the best and first desirable institution to achieve the object of the Act. Hence, the primary responsibility of care and protection of the child has been given to the biological family or adoptive or foster parents of the child and it has been contemplated that every child in conflict with law has right to be reunited with his family at the earliest. Institutionalization of a juvenile in conflict with law has been contemplated as the last resort. Such principles manifest in clauses iv, v, xii and xiii of Section 3 of the Act of 2015 which are 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:—

.....
(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.

.....
(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.”

(Emphasis Supplied)



16. In view of the aforesaid object and principles of the J.J. Act, 2015, Section 12 of the Act provides for mandatory bail to a juvenile in conflict with law unless the grounds as provided in the proviso to Section 12(1) of the Act is/are present, so that the child is re-united with his family at the earliest opportunity and the protection, development, reformation and rehabilitation of the child is ensured.

17. Hence, as per the J.J. Act of 2015, a child in conflict with law is not expected to be treated as an adult offender. Fundamentally a different approach is required while dealing with juvenile in conflict with law. All Courts are required to deal with juvenile in conflict with law with all sensibility and responsibility keeping in mind the object of the J.J. Act to reform and rehabilitate the child, so that he can become a responsible and productive member of the society. The society would get ruined if such children are dealt with punitive and not reformatory approach.

18. Coming to the case on hand, I find that the petitioner has been denied bail by learned Appellate Court below and learned Juvenile Justice Board on irrelevant consideration and conjecture and surmises. It has been held by learned Courts below that there is strong possibility of the



petitioner coming into contact with known or unknown criminals on his release on bail. It has been also held that the release of the petitioner on bail would not be in his best interest and his release may also defeat the ends of justice. It has been also held that preliminary assessment under Section 14(3) and 15 of the Juvenile Justice Act is still to be conducted and Probation Officer has also recommended in his report for rehabilitation of the petitioner under Section 18(1) (G) of the J.J. Act, 2015.

19. From perusal of the Social Investigation report filed by the Probation Officer, I find that there is no material on record to show that on release on bail, the petitioner may come into contact with criminals. As per the Social Investigation report, the father of the petitioner is an educated man having good physical and mental health and the petitioner is a matriculate and his sister is also a student of intermediate. The petitioner has also cordial relationship with his parents and other family members. He has also no criminal antecedents and he is respectful to his family and obedient to his elders. The petitioner has been also shown not to have any tendency to flee away from his house and his physical and mental health has been also found to be normal. It is also not a case of the prosecution that



petitioner has committed the offence as a member of a gang. As such, the finding of the Court below that on release on bail, the petitioner may come into contact with criminals is totally unfounded.

20. I also find that the Court below has also held that the release of the Petitioner on bail would not be in his best interest. Such view of the Court below is also not sustainable in view of the facts and circumstances of the case and the object and statutory provisions of J.J. Act, 2015. Reformation, development, reintegration and rehabilitation of the child is the main object of the Act and family of the petitioner is considered better than any other institution to take care and protection of the child to ensure his development and rehabilitation. Who can think and act better than the parents of the child about the welfare of the child?

21. Moreover, in the case on hand, I find that there is no criminal antecedents of the petitioner and his parents. His father is educated, his sister is also studying and petitioner has also studied up to Matric class. Hence, reunion of the child with his family would better serve the object of the Act ensuring his development and rehabilitation. Hence, the release of the petitioner on bail would no way be against the best interest of



the child.

22. Learned Court below has also held that the release of the Petitioner on bail might defeat the ends of the justice. Here also, learned Court below has misconceived/misunderstood the words- “defeat the ends of justice”. Justice is interpreted in the context of the provisions of the Act involved. The aim behind the J.J. Act is protection, development, reintegration and rehabilitation of juveniles in conflict with law as manifested in the preamble of this Act, which reads as follows:

“An Act to consolidate and amend the law relating to children alleged and found to be in conflict with law and children in need of care and protection by catering to their basic needs through proper care, protection, development, treatment, social reintegration, by adopting a child-friendly approach in the adjudication and disposal of matters in the best interest of children and for their rehabilitation through processes provided, and institutions and bodies established, hereinunder and for matters connected therewith or incidental thereto.”

23. The factors defeating the ends of justice has to be found and located in the context of the purpose or object of the Act. In the context of the J.J. Act, if there is a factor which requires the Court to keep the child in custody for meeting the developmental needs of the child or for his rehabilitation or for his care and protection, only then it can be said that release of the child would defeat the ends of justice. (Also refer to **Abhishek Vs. State, 205 CriLJ (NOC) 115 (Delhi)** and **Manoj**



Vs. State (NCT of Delhi, 2006 CriLJ 4759).

24. It has been already discussed above that Observation Home is only one of the institutions contemplated for achieving the object of the Act, but family has been considered as the best and most desirable institution for ensuring welfare and rehabilitation of the child, if the family environment is conducive for the development of the child. In such situation, it was wrong for the Court below to hold that the release of the petitioner on bail would have defeated the ends of justice. In fact, the release of the Petitioner on bail could have served and promoted the ends of justice better than detaining the Petitioner in the observation home.

25. Even pendency of the preliminary assessment of the child/Petitioner is not a ground to deny bail to the child. Even a child above sixteen years of age alleged to have committed heinous offence is equally entitled to bail under Section 12 of the Act.

26. Even, recommendation of the Probation Officer for rehabilitation of the child under Section 18(1)(G) of the Act was no hindrance in the grant of bail to the Petitioner. Rehabilitation under Section 18(1)(G) of the Act comes after completion of the inquiry. During inquiry, there is no such



ground provided in Section 12 of the Act to deny bail to the child/Petitioner. Moreover, recommendation of the Probation Officer is not binding on the J.J. Board, nor such recommendation is relevant factor for consideration under Section 12 of the Act.

27. Hence, the impugned order is not sustainable in the eye of law. It is accordingly set aside and the present petition is allowed directing the petitioner to be released on bail, subject to furnishing a bail bond of Rs.10,000/-(Rs. Ten Thousand) by his father. The father of the Petitioner is also directed to give undertaking by way of affidavit that the child/Petitioner does not come into contact with any criminal and he would take care of the developmental needs of the child and he would also ensure that the child would continue his studies and attend the J.J. Board and Courts as and when required or directed.

(Jitendra Kumar, J.)

Ravishankar/
Shoaib/
Chandan/-

AFR/NAFR	AFR
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