

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.4059 of 2023

Arising Out of PS. Case No.-217 Year-2022 Thana- MOUZAHDIPUR District- Bhagalpur

XXXX Son Of Prakash Mandal His Legal Guardian Mother Namely Sunita Devi, Wife Of Prakash Manda, Aged About 52 Years, Resident Of Village - Maheshpur Aliganj Near Kalisthan, P.S. - Babarganj (MOJAHIDPUR), District – Bhagalpur

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Pankaj Kumar, Advocate
For the Respondent/s : Ms. Rina Sinha, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

5 03-01-2024 Heard learned counsel appearing on behalf of the appellant/petitioner and learned APP appearing on behalf of the State.

2. The present application is being preferred against judgment dated 12.07.2023 passed by learned Special Judge (Children Court) Bhagalpur in Special Case (Children) No. 29 of 2022 by which the learned Court refused to enlarge the petitioner on bail in case arising out of Mojahidpur (Babarganj) P.S. Case No. 217 of 2022 registered for the offence punishable under Sections 302/34 of the Indian Penal Code and Section 27 of the Arms Act.



3. The appellant/CICL (Child in Conflict with Law), aged about 15 years on the alleged date of occurrence i.e. 22.06.2022, is named in F.I.R., and is in custody/observation home since 02.10.2022.

4. The allegation against this appellant/CICL is to commit murder of the son of informant alongwith other co-accused persons by causing firearm injury.

5. Learned counsel appearing on behalf of the appellant/CICL submitted that the maximum allegation as appears from the narration of F.I.R. against appellant/CICL is to accompany with main co-accused, namely Akash Kumar @ Putul Kumar, against whom specific allegation as to cause fatal firearm injury hitting the chest of deceased. It is submitted that said Akash Kumar @ Putul Kumar, also a CICL has already granted bail by one of the learned Co-ordinate Bench of this Court through Criminal Revision No. 519 of 2023 vide order dated 08.08.2023.

6. Learned counsel appearing on behalf of the appellant/CICL submitted that mother of the juvenile appellant/CICL is ready to stand as a surety and furnish an undertaking that he will take care of the appellant/ CICL and shall ensure his studies as well as that he would not fall in bad company and



would take all possible care to connect him with the mainstream of the society.

7. Learned APP for the State while opposing the prayer for bail and submitted that Social Investigation Report (SIR) is not favouring appellant/CICL as to enlarge him on bail. However, it was conceded that specific allegation as to cause fatal firearm injury is not available against the present appellant/CICL.

8. It would be apposite at this stage to reproduce Para-5 & 6 of the legal report of this High Court as reported in the matter of Criminal Revision No. 519 of 2023 for better understanding of the case, which is as under:-

5. 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.”

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 under the Act.

9. Having regard to the submission and materials showing that the appellant has been adjudged juvenile aged about 15 years approximately on the alleged date of occurrence, no active participation of the appellant/ CICL has been alleged and the social investigation report of the petitioner is not showing any adverse material against him so as to dissuade this court for granting release of the appellant/petitioner on bail, as also that appellant has remained in the Observation Home for more than one year and his mother is ready to stand as a surety and furnish an undertaking that if released on bail he will take care of the petitioner and shall ensure that he does not fall in bad company and, in case, the petitioner indulges in any unlawful act, he will inform it to the jurisdictional police station as also following the spirit of section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015 and in view of the exceptions carved out by the Hon'ble Division Bench of this Court in the case of **Lalu Kumar and Ors. Vs. The State of Bihar reported in 2019 (4) PLJR 833** that classification of the offences under the bailable and non-bailable sections would not be relevant for the purpose of grant of bail to a juvenile and the prayer for bail of a juvenile may be rejected only under one of the three conditions as under:-



“(i) The release is likely to bring that person into association with any known criminal;

(ii) The release is likely to expose the said person to moral or physiological danger; and

(iii) The release would defeat the ends of justice.”

10. From the aforesaid discussed fact, it nowhere appears that appellant/CICL cannot rejoin the mainstream of society after getting him reformed, moreover, the allegation of fatal firearm injury is available against co-accused, who is another CICL and has already been granted bail.

11. Accordingly, this court sets-aside the impugned order and directs release of the appellant/petitioner on bail on furnishing bail bond of Rs.10,000/- (Rupees Ten Thousand only) with two sureties of the like amount each to the satisfaction of learned Special Judge (Children Court) Bhagalpur/concerned Court in connection with Mojahidpur (Babarganj) P.S. Case No. 217 of 2022.

12. One of the sureties should be the mother of the appellant/ CICL and he will also furnish an undertaking in terms stated here-in-above.

13. The Probation Officer shall keep on visiting the



place of the petitioner and shall submit periodical report to the Juvenile Justice Board (J.J.B.), Bhagalpur, regarding conduct of the appellant. If found anything adverse against this appellant/petitioner, the same will also be reported to the Board for necessary action.

(Chandra Shekhar Jha, J.)

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