

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.4645 of 2023**

Arising Out of PS. Case No.-718 Year-2022 Thana- CHAPRA TOWN District- Saran

XXX

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellant/s : Mr.Maheshwar Prasad, Advocate

For the Respondent/s : Mr.Abhay Kumar, APP

**CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT**

Date : 30-01-2024

Heard learned counsel appearing on behalf of the appellant/CICL and learned A.P.P. for the State.

2. The present appeal is being preferred against the order dated 13.09.2023 passed by learned 1st Additional Sessions Judge–cum–Children Court Judge, Saran at Chapra in connection with Children Case No. 08/2023, Registration No. 08/2023 arising out of Chapra Town P.S. Case No. 718 of 2022 for the offence under Section 302, 201 and 34 of the Indian Penal Code, by which the learned Court has refused to enlarge the appellant/CICL on bail.

3. Learned counsel appearing on behalf of the appellant/CICL submitted that the appellant/CICL is not named in the First Information Report (in short the ‘F.I.R.’) and he is in custody since 02.12.2022.



4. Learned counsel for the appellant/CICL submitted that from the certified copy of letter dated 03.01.2024, which has been placed and taken on record during course of hearing itself, in terms of this Court's order dated 18.01.2024, it appears that the age of the appellant/CICL is seventeen (17) years five (5) months and seventeen (17) days on the date of occurrence.

5. Learned counsel submits that allegation against appellant/CICL is to commit murder of son of the informant along with other co-accused persons. It is submitted that name of appellant/CICL has surfaced during course of investigation and it appears first time while informant was recording his re-statement, where it has been stated that he came to know from one Hassain Khan that his deceased son was 'last seen' with the appellant/CICL. It is submitted that save and except suspicion arises out of 'last seen' nothing incriminating material surfaced during the course of investigation which may connect the appellant/CICL with the present occurrence of murder.

6. It is further pointed out from Social Investigation Report (in short 'S.I.R.') that nothing appears adverse against this appellant/CICL out of which it can be said that appellant/CICL cannot join the mainstream of society after getting him reformed in due course of time. It is submitted that



investigation of this case is completed and charge-sheet has been submitted and, as such, there is no chances of tampering with the evidence, if released on bail. The appellant/CICL is a man of clean antecedent.

7. Learned counsel appearing on behalf of the appellant/CICL submitted that father of the 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.

8. Learned counsel for the appellant/CICL 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”*

9. Learned counsel while 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.

10. 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.

11. 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 appellant/CICL would bring him in association with bad elements of society.

12. Learned A.P.P. for the State fairly conceded that the appellant/CICL is not named in the F.I.R., but it is pointed out by him that as per S.I.R., his involvement with society may be harmful.

13. Learned A.P.P. submits that from perusal of Section 12 of the Act, it appears that bail is a matter of right to the appellant/CICL 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 appellant on bail in the best interest of the child.

14. The Division Bench of this Court in the case of **Lalu Kumar and Ors. Vs. The 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 the 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 Code of Criminal Procedure.

15. Having regard to the facts and circumstances of the case and by taking note of the fact that as nothing incriminating material surfaced against the appellant/CICL during course of investigation as to connect him with the present occurrence of murder of son of the informant except suspicion arises out of 'last seen', where nothing adverse surfaced out of S.I.R. to suggest that appellant/CICL cannot join the mainstream of society, coupled with fact that charge-sheet has already been submitted in the case and there is no chance that the



appellant/CICL would tamper with the evidences, if released on bail, I am of the considered opinion that from the report of the Juvenile Justice Board, Saran at Chapra, it appears that the age of the appellant/CICL is seventeen (17) years five (5) months and seventeen (17) days on the date of occurrence and further taking into consideration the materials on record as well as the period of incarceration of the appellant/CICL and in the best interest of appellant/CICL, this Court is of the considered view that the impugned order passed by the court below is not sustainable in the eyes of law inasmuch as the same is not in consonance with the aims and objectives of the Act.

16. In result, I am of the opinion that the learned court below has committed material irregularity in arriving at the conclusion that grant of bail to the appellant/CICL would amount to defeating the ends of justice.

17. Accordingly, the order dated 13.09.2023 passed by learned 1st Additional Sessions Judge—cum—Children Court Judge, Saran at Chapra in connection with Children Case No. 08/2023, Registration No. 08/2023 arising out of Chapra Town P.S. Case No. 718 of 2022 is hereby set aside.

18. The appeal is allowed.

19. Let the appellant/CICL, 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 1st Additional Sessions Judge–cum–Children Court Judge, Saran at Chapra in connection with Children Case No. 08/2023, Registration No. 08/2023 arising out of Chapra Town P.S. Case No. 718 of 2022 on the following conditions:-

- (i) that one of the bailors shall be the father of the appellant/CICL.*
- (ii) that the father of the appellant/CICL shall file an affidavit before the learned Juvenile Justice Board, Saran at Chapra giving specific undertaking that after release of the appellant/CICL on bail, he will take proper care of the appellant and will not allow him to fall into bad company.*

(Chandra Shekhar Jha, J.)

Rajeev/-

AFR/NAFR	
CAV DATE	
Uploading Date	30.01.2024
Transmission Date	30.01.2024

