

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.145 of 2025

In
CRIMINAL REVISION No.852 of 2024

Arising Out of PS. Case No.-252 Year-2023 Thana- CHERIYA BARIYARPUR District-
Begusarai

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Varsha Kumari Daughter of Nagendra Pathak @ Ganesh Pathak village-
Mohdashahpur Ward no. 1, Ps- Cheria Bariyarpur, dist- Begusarai Through
her uncle and legal guardian namely Deepak Kumar Pathak, Aged about 47
years, son of Jagdish Pathak, Resident of Mohdashahpur, ward no. 1, Ps-m
Cheria Bariyarpur, dist- Begusarai

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Sunil Kumar, Advocate

For the Respondent/s : Mr. Sanjay Kumar Singh, SPP

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CORAM: HONOURABLE MR. JUSTICE RUDRA PRAKASH
MISHRA

ORAL ORDER

5 17-01-2025 Heard learned counsel for the appellant, learned

Special Public Prosecutor for the State and perused the case

diary.

2. The instant appeal has been filed by the appellant
against the order dated 27.08.2024 passed by learned Additional
Sessions Judge-I-cum-Special Judge, Juvenile Court, Begusarai,
whereby the prayer for bail of the appellant in connection with
J.J.C.P. Case No. 09 of 2023, arising out of Cheria Bariyarpur
P.S. Case No. 252 of 2023 under Sections 302/34 of the Indian
Penal Code.



3. Prosecution case, in short, is that, the accusation against the appellant is of being involved in killing the deceased by strangulating him.

4. Learned counsel for the appellant submits that the appellant is juvenile and innocent and has committed no any offence as alleged in the F.I.R. The appellant has falsely been implicated in the present case merely on the basis of suspicion. The appellant is the wife of the deceased. There is no eye-witness to the alleged occurrence rather a spy has disclosed the fact of there being love affairs between Varsha Kumari and one Md. Eklakh. As a matter of fact, the present case is a case of suicide due to scuffle which took place between the husband and the wife (appellant). The appellant has been declared juvenile on 09.11.2023 by the Juvenile Justice Board, Begusarai and her age was evaluated as 17 years, 6 months and 14 days which is apparent from the impugned order itself. There is no direct or specific evidence against the appellant and, only on the basis of suspicion and circumstantial evidence collected by the spy, the appellant has been falsely implicated in the present case.

5. Learned counsel for the petitioner further submits that the father and mother of the appellant namely Nagendra



Pathak @ Ganesh Pathak and Chunni Devi @ Aheliya Devi @ Anisha Devi have been granted bail by this Court vide order dated 03.04.2024 passed in Cr. Misc. No. 24008 of 2024. The appellant is a lady and has no criminal antecedent and is languishing in jail custody since 15.09.2023.

6. Learned counsel for the appellant further contends that the uncle of the appellant, who is the guardian of the appellant, undertakes that he will take care of the conduct and behaviour of the appellant and further added that the appellant will bear good conduct and behaviour in future. He thus submits that the appellant may be released on bail. He further submits that the present case does not come under the proviso of Section 12 of the J.J.Act and so far as Social Investigation Report (S.I.R.) is concerned, he has no criminal antecedent.

7. Learned counsel for the appellant further submits that uncle of the appellant is ready to keep the appellant in a social conducive atmosphere and will not allow his niece to be in company of unlawful element of the society. Learned counsel for the appellant further submits that the uncle of the appellant has given an undertaking that upon release on bail, juvenile 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 uncle of the appellant will ensure that the juvenile will not repeat the offence. Learned counsel for the appellant 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 petitioner who is child in conflict with law.

8. Learned Special P.P. for the State has vehemently opposed the prayer for grant of bail to the appellant.

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 available 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 persons 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 child in conflict with law 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 uncle of the appellant coupled with the fact that the parents



of the appellant accused having been granted bail by this Court coupled with the fact that the present case is not covered by the proviso of Section 12 of the J.J. Act, it appears that the order dated 27.08.2024 is not justified in law.

14. Considering the aforesaid facts and circumstances of the case and the period of custody undergone by the appellant, this Court is inclined to allow this appeal.

15. Accordingly, the appeal is allowed and order dated -27.08.2024 passed by learned Additional Sessions Judge-I-cum-Special Judge, Juvenile Court, Begusarai, is hereby set aside.

16. Let the appellant 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.C.P. Case No. 09 of 2023, arising out of Cheria Bariyarpur P.S. Case No. 252 of 2023, subject to following subject to the following conditions:

- (i) The first bailor must be the uncle of the appellant.
- (ii) The second bailor would be the recognized member of the Panchayat or the reputed person of the village.
- (iii) The appellant 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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