

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.148 of 2024

Arising Out of PS. Case No.-192 Year-2023 Thana- SHERGHATI District- Gaya

Nitish Kumar, Son of Baleshwar Yadav, Resident Of Village - Gadh Karmauni, P.S. - Dobhi, District - Gaya, Through His Father And Natural Guardian Baleshwar Yadav

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. P. N. Shahi, Sr. Advocate Mr. Amit Anand, Advocate Mr. Shivam, Advocate
For the Respondent/s	:	Mr. Arun Kumar Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

2 08-01-2025 1. The petitioner, a juvenile delinquent, aged about 15 years, has filed the instant criminal revision through his father and natural guardian, Baleshwar Yadav, challenging the order, dated 6th of December, 2023, passed by the learned Special Judge (Children Court), Gaya in Juvenile Appeal No. 52 of 2023, whereby and whereunder, his prayer for appeal was rejected, affirming the order dated 28th of August, 2023, passed by the Juvenile Justice Board, Gaya.

2. It is not in dispute that the petitioner booked in connection with Sherghati/Dobhi P. S. Case No. 192 of 2023, dated 19th of February, 2023, under Section 376 of the Indian Penal Code and Sections 4/6 of the POCSO Act on the



allegation that he committed rape of a deaf and dumb girl.

3. The petitioner preferred an application for bail before the Juvenile Justice Board, which was rejected. Against the said order, he, through his natural guardian, preferred Juvenile Appeal No. 52 of 2023. The learned Special Judge, Children Court at Gaya, dismissed the appeal and affirmed the order of rejection of bail on the following grounds: -

(i) There appears reasonable grounds for believing that the release of the juvenile is likely to bring him into association with any known criminal.

(ii) The release will expose the juvenile to moral, physical or psychological danger; and

(iii) His release would defeat the ends of justice.

4. In paragraph 9 of the impugned judgement, the Appellate Court narrated the incident, which was allegedly committed by the petitioner. It is also stated in paragraph 10 of the impugned order that the Social Investigation Report does not reveal any positive view about the CICL. There are negative environment near the house of CICL. There is lack of proper guidance and lack of morality. As such, the conduct of the CICL showed criminal proclivities and criminal psychology. If he is released from the protective custody, there is likelihood of his



going back in the same environment and the victim being a minor, physically challenged girl may be prey of the unnatural lust of the CICT.

5. Chapter-II of the Juvenile Justice (Care and Protection of Children) Act, 2015 lays down the general principles of care and protection of children. Section – 3 of the said Act states: -

“3(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 18 years.

3(iv) Principle of best Interests : 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.

3(v) Principle of Family responsibility: The primary responsibility of care, nurture and protection of child shall be that of the biological family or adoptive or first aid parents, as the case may be.

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

6. Mr. P. N. Shahi, learned Sr. Advocate appearing on



behalf of the CICL submits that both the Juvenile Justice Board as well as the Appellate Court failed to consider that the prayer for bail of CICL should be considered with a presumption of innocence.

7. In the instant case, the Probation Officer submitted the Social Investigation Report (SIR) in a mechanical manner without assigning specific incident of his apprehension and both the JJB and the Court of Appeal accepted SIR as gospel truth relating to the future conduct of the petitioner.

8. This Court has already recorded that an application for bail filed on behalf of the CICL shall be considered with a presumption of innocence.

9. Section 12(1) of the said Act makes the provision relating to bail to a person who is apparently a child to be in conflict with law. Section 12(1) says: -

*“12(1) When any person, who is apparently a child and is alleged to have been 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 Criminal Procedure Code, 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.”

10. The word “shall” in Section 12(1) of the said act, raises a presumption that Section 12(1) is imperative, but for the proviso. The prima facie inference may be rebutted on the basis of probe of conditions contained in the proviso to the effect that the release is likely to bring him into association with any known criminal; secondly that the release is likely to expose him to moral, physical or psychological danger; (c) that release of juvenile in conflict of law would defeat the ends of justice.

11. In the impugned judgement, this Court does not come across with the finding made by the Appellate Court that the proviso to Section 12 were applicable against the petitioner.

12. In **Lalu Kumar @ Lal Babu @ Lallu vs The State of Bihar**, reported in **2019 (4) PLJR 833**, this Court while interpreting Section 12 of the said 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.

13. It is high time to remind both the JJBs and the learned Special Judges, Children’s Court that as per Section 12 of the Act, **an application for bail is not decided by reference**



to classification of offences as bailable or non-bailable under the Cr.P.C.

14. In **Nand Kishore (in JC) Vs. State**, reported in **(2006) 4 RCR (Cri) 754**, Delhi High Court while considering the first condition of proviso of Section 12 of the said Act, observed that “as regards the first exception, before it can be invoked to deny bail to a juvenile, there must be a reasonable ground for believing that his release is likely to bring him into association with known criminals. The expression “known criminal” is not without significance when the liberty of a juvenile is sought to be curtailed by employing the exception, the exception must be construed strictly. Therefore, before this exception is invoked, the prosecution must identified the “known criminals” and thereafter the Court must have reasonable grounds to believe that the juvenile, if released, would associate with this “known criminals”. It cannot be generally observed that the release of the juvenile would bring him into association with criminals without identifying the criminal and without returning a prima facie finding with regard to the nexus between the juvenile and such criminals.

15. Section 13(i)(ii) of the said Act provides that the Probation Officer shall submit a Social Investigation Report



within two weeks from when a child is apprehended or brought to the Board containing information regarding the antecedents and family background of the child and other material circumstances likely to be of assistance to the Board for making an enquiry. The Social Investigation Report (SIR), which has been defined in Rule 2(xvii) of the Juvenile Justice (Care and Protection of Children) Model Rules, 2016 means the report of a child containing detailed information pertaining to the circumstances of the child, the situation of the child on economic, social, psycho-social and other relevant factors and the recommendation thereon. This report becomes important for the enquiry to be done by the Board while passing such orders in relation to such a child as it deems fit under Sections 17 and 18 of this Act. The purpose behind this provision is to enable Juvenile Justice Board to get a glimpse of the social circumstances of the child before any order regarding bail or of any other nature is passed.

16. From perusal of the Social Investigation Report, It is found that the concerned Probation Officer made a table work and mechanically prepared SIRs without following Rule 2(XVI) and Form - 6 of the Model Rules of 2016. A Co-ordinate Bench of the Allahabad High Court in **Juvenile X through his**



father Vs. State of U. P. and Anr., reported in **2021 SCC Online All 1091** succinctly dealt with the requirement to be followed by the Probation Officer while filing Social Investigation Report. Paragraph 23 of the judgement is very relevant for our purpose and the same is reproduced hereinbelow: -

“23. ‘Form-6’ of The Juvenile Justice (Care and Protection of Children) Model Rules, 2016, contains a detailed proforma of the social investigation report. The report has three parts; the first part requires the Probation Officer to give the data or information regarding the close relatives in the family, delinquency records of the family, social and economic status, ethical code of the family, attitude towards religion, relationship amongst the family members, the relationship with the parents, living conditions etc. Thereafter, the report requires the Probation Officer to provide the child's history regarding his mental condition, physical condition, habits, interests, personality traits, neighbourhood, neighbours’ report, and school, employment, if any, friends, the child being subject to any form of abuse, circumstances of apprehension of the child, mental condition of the child. The most important part of the report is the third part i.e. the result of inquiry where the Probation



Officer is required to inform the Board about the emotional factors, physical condition, intelligence, social and economic factors, suggestive cause of the problems, analysis of the case including reasons/contributing factors for the offence, opinion of experts consulted and recommendation regarding rehabilitation by the Probation Officer/Child Welfare Officer. It is incumbent upon the Juvenile Justice Board to take into consideration the social investigation report and make an objective assessment of the reasonable grounds for rejecting the bail application of the juvenile.”

17. On perusal of the impugned order, it appears to this Court that both the JJBs and the Courts of Appeal have dealt with the application for bail and connected appeal on the consideration that the offences committed by the petitioner is heinous offences. Both the Board and the Court of Appeal must be free from this mind set that an application for bail of CICL cannot be rejected on the ground of heinous offence. At the same time, the Board and the Court of Appeal shall remain alive to impose conditions for bail in the manner through which the future of CICL is protected. He may be kept under the supervision and guidance of a proper person so that he may not come in association of known criminals or that the order of bail expose him to moral, physical or psychological danger or it will



defeat ends of justice.

18. For the reasons stated above, I am inclined to allow the revision on contest.

19. The petitioner/CICL shall be released on bail on furnishing bails bonds of Rs. 20,000/- with two sureties of the like amount each to the satisfaction of the concerned Court with further condition that:

(i) one of the sureties must be the parent of the petitioner; and

(ii) the other shall be the Panchayat Member of the village or any other responsible person of the village / locality having no criminal antecedents with further conditions that the CICL shall remain present before the Board or the Children's Court, as the case may be, on each and every date of trial of the case.

20. The order of bail shall be automatically cancelled in violation of any of the conditions.

21. Let a copy of this judgement be transmitted by the Registry of this Court to all the District Judges within two weeks for circulation to all the Juvenile Justice Boards and Children's Courts, constituted under the said Act (Act 2 of



2016) for their appraisal as to the mode and manner and the factual and legal consideration while granting or rejecting a prayer for bail or connected Appeal under the said Act.

22. Office is directed to send the email of this order to the respective Courts.

(Bibek Chaudhuri, J)

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