

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.356 of 2024

Arising Out of PS. Case No.-451 Year-2023 Thana- SURSAND District- Sitamarhi

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Bajrangi Sahni, aged about 16 years, Son Of Dashrath Sahni Resident Of Village - Maruki, P.S. - Sursand, District - Sitamarhi, Through His Father And Natural Guardian Dashrath Sahni, Aged About 56 Years, Son Of Indradeo Sahni, Resident Of Village - Maruki, P.S. - Sursand, District - Sitamarhi

... .. Petitioner/s

Versus

The State Of Bihar

... .. Respondent/s

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Appearance:

For the Petitioner/s : Mr. Pushpendra Kumar Singh, Advocate
: Ms. Divya Bharti, Advocate
For the Respondent/s : Mr. Md. Anzarul Haque Sahara, APP

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CORAM: HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA

ORAL ORDER

2 28-02-2025 Heard learned counsel for the petitioner and learned APP for the State.

2. The instant criminal revision is filed against an order dated 01.04.2024, passed in Criminal Appeal No. 5 of 2024, whereby and where-under the learned Additional Sessions Judge-I-cum-Special Judge, Children's Court, Sitamarhi, rejected the prayer for bail of the petitioner, who according to determination by the Juvenile Justice Board happens to be a juvenile on the date of commission of offence. The petitioner has been denied bail in connection with First Information Report No. 451 of 2023 registered with Sursand P.S., Sitamarhi dated 14.08.2023 for the offences punishable under Sections



302, 363, 201, 120B and 34 of Indian Penal Code, 1860 respectively.

3. The prosecution case in brief is that Kamod Yadav Son of Late Lakshmi Yadav filed a written report on 14.08.2023 at 15:00 hours alleging inter-alia that on the night of 10.08.2023 at about 08.00 P.M. (1) Chandan Sah son of Dinesh Sah, (2) Jilajeet Sahni son of Suresh Sahni, (3) Vidyanand Kumar son of Lal Bahadur Ray, (4) Bajrangi Sahni son of Dasrath Sahni, (5) Suresh Sahni son of Late Harak Sahni, (6) Dinesh Sah son of Sophi Sah and (7) Vinod Yadav son of Late Ram Daresh Ray, all residents of village Maruki, P.S.- Sursand, District- Sitamarhi came to call his son Mudrika Kumar aged about 17 years and took him for a walk to a bridge near the village. The informant alleged that when his son did not return home till late that night he thought his son might have slept at the house of those persons and on next day when informant asked about his son from those persons, they told him that his son had gone to a relatives place. Thereafter, informant and his family members started searching for his son in the nearby villages and relatives place but he could not be traced. Thereafter the informant filed the FIR and named the above persons as accused under the suspicion that they had murdered



his son. The informant explained the delay in lodging the FIR as he was searching for his son and having failed to find him, he approached the police by submitting his written application on 14-08-2023.

4. On the basis of the aforesaid written report of informant Kamod Yadav, the instant case bearing Sursand P.S. Case No. 451 of 2023 registered under Sections 302,363,201 and 120(B)/34 of Indian Penal Code against the seven named accused including the petitioner and accordingly the police proceeded with investigation and submitted the charge-sheet.

5. Learned counsel for the petitioner has submitted that the petitioner is innocent and has falsely been implicated in this case by informant merely on the basis of suspicion. He further submitted that there is no eye witness who has come forward to say that he had seen the petitioner with deceased on the place of occurrence or near the place of occurrence. He further submitted here that there was no specific allegation against the petitioner and the informant named him because he allegedly saw the petitioner and other co-accused with the deceased Mundrika Kumar on the night of occurrence.

6. He further submitted that the District and Sessions Judge failed to appreciate that a prayer for bail of a



juvenile can be rejected only on grounds mentioned in the Juvenile Justice Act and no other. He further submitted that the petitioner has a bright career ahead and if he is kept behind the bars then his bright future will be jeopardized. He further submitted that the parents of the petitioner undertake to take proper care and vigilance about the future activities of the petitioner. Petitioner has got no criminal antecedents and is in custody since 16.08.2023.

7. Learned APP for the State has vehemently opposed the prayer for bail. He submitted that there is reasonable grounds for believing that if the petitioner is released on bail he would come into association with the other bad elements of the society. He further submitted that the allegations levelled against the petitioner are serious and grave in nature and thus he should not be released on bail.

8. The learned Juvenile Justice Board, Sitamarhi, *vide* its order dated 01.02.2024 rejected the petitioner's bail application on the grounds that the offences levelled against the petitioner are serious in nature and if the petitioner is released there is apprehension of moral, physical and psychological danger to him and in such circumstances his release would defeat the ends of justice.



9. The learned Additional Sessions Judge-I-cum-Special Judge, Children's Court, Sitamarhi, rejected the prayer for bail of the petitioner and upheld the order of the Juvenile Justice Board, Sitamarhi by which the prayer of bail of the petitioner was rejected and dismissed the appeal.

10. Having perused the FIR, case diary and the materials available on record, it is evident to note that Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015 which deals with grant of bail to juveniles reads as under:

“12. (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 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.”

11. In the case of **Biswajit Kumar Pandey @**



Lalu Kumar Vs. State of Bihar, reported in ***2024 SCC OnLine Pat 8499***, this court had discussed the statutory provisions of the Juvenile Justice Act, 2015 and binding judicial precedents in details and held as follows:-

“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 law 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 law 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 reunited 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.”

(Emphasis Supplied)

12. Coming to the case in hand, I find that the learned Children's Court-cum- Addl. District and Sessions Judge-I, Sitamarhi has rejected the bail petition of the appellant on the grounds that he was involved in the alleged offence of murder and his release would bring him into association with other bad elements and expose him to moral, physical and



psychological danger and his release would defeat the ends of justice.

13. However, as per the statutory provisions and binding judicial precedents, I find that the mere involvement of the appellant in offence of serious nature is no ground for denying bail to a juvenile.

14. Moreover, the observation of learned trial Court that the appellant has bad company is baseless. The Social Investigation Report does not show that the appellant was involved in any criminal activities prior to the present case. No crime has been shown to have been committed by him prior to the present case.

15. The finding of the trial Court that the release of the appellant would bring him into bad company is also unfounded. As per Social Investigation Report, it does not appear that he was a member of any criminal group and his release may bring him into company of that group.

16. I also find that learned trial Court has misconceived the meaning of 'ends of justice' when he has held that release of the appellant would defeat the ends of justice. The meaning of ends of justice in the context of J.J. Act is totally different. The purpose and object of the J.J. Act is to



reform and rehabilitate the juveniles and not to punish them.

The preamble of the Act 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, herein under and for matters connected therewith or incidental thereto.”

17. As such, if keeping of the child in custody is helpful in his development and rehabilitation or protection, only then it could be said that release of the child would defeat the ends of justice. This view has been observed by the learned Delhi High Court in ***Abhishek Vs. State, 205 CriLJ (NOC) 115 (Delhi)*** and ***Manoj Vs. State (NCT of Delhi, 2006 CriLJ 4759)***. The family is 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, the release of the appellant on bail would serve and promote the ends of justice better than detaining the appellant in the observation home.



18. Hence, the impugned order is not sustainable in the eye of law. It is accordingly set aside allowing the present petition, directing the appellant to be released on bail on furnishing bail bonds of Rs.10,000/- (Rs. Ten Thousand/-) with two sureties of the like amount each to the satisfaction of learned Principal Magistrate, Juvenile Justice Board, Sitamarhi in connection with J.J. Board Case No.2164 of 2023 arising out of Sursand P.S. Case No.451 of 2023, subject to the condition that both the bailors must be the father and mother of the petitioner.

(i) The father and mother of the appellant undertake by way of affidavit that the appellant would not come into contact with any criminal;

(ii) They further undertake to provide vocational training to the petitioner and;

(iii) They further undertake to ensure that the petitioner would attend the J.J. Board and Courts as and when required or directed.

(Ramesh Chand Malviya, J)

Brajesh Kumar/-

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