

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.3293 of 2024

Arising Out of PS. Case No.-242 Year-2023 Thana- MADHEPUR District- Madhubani

Chandan Kumar Paswan, S/O Dukhan Paswan, R/O Village- Madhepur, P.S- Madhepur, Distt.- Madhubani under natural guardianship of Jibachhi Devi W/O Dukhan Paswan, R/O Village- Madhepur, P.S- Madhepur, Distt.- Madhubani, (Mother on behalf of the Appellant).

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellant	:	Mr. Sheikh Arkan Ahmad, Advocate
For the State	:	Mr. Chandra Sen Prasad Singh, APP

CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL JUDGMENT

Date : 08-07-2025

The present appeal has been preferred by the appellant against the impugned order dated 22.05.2024 passed by learned Additional Sessions Judge-Ist.-cum-Special Judge, Children Court, Madhubani, in E. N. No. 1470 of 2023, arising out of Madhepur P.S. Case No. 242 of 2023, whereby learned Children Court has rejected the application of the appellant for releasing him on bail.

2. The appellant has been lodged in Observation Home for about one year and seven months since 05.10.2023.

3. Madhepura P.S. Case No. 242 of 2023 has been registered against unknown 4-5 persons for offences punishable under Sections 341, 323, 302, 363, 364, 201 read with Section

34 of the Indian Penal Code on written report of one Runa Devi regarding death of her husband, Guddu Jha.

4. As per the written report dated 29.09.2023, Guddu Jha was missing since morning and despite search, the informant could not get any clue about his whereabouts. But she came to know as per hearsay that he was beaten by 4-5 persons in Pasikhana (place of taking *tari*, a type of intoxicant made of palm juice) at about 8-10 am.

5. Subsequent to the lodging of the F.I.R., the dead body of Guddu Jha was found in Sanath Jha's pond. The pond was filled up with water. As per the post-mortem report, death of Guddu Jha was caused by drowning.

6. After completion of investigation, charge-sheet was submitted against four persons including the appellant for offences punishable under Sections 364, 302, 201 read with Section 34 of the Indian Penal Code.

7. Subsequently, vide order dated 20.12.2023, the appellant was found to be 17 years, 5 months and 24 days old and was declared juvenile. As per preliminary assessment vide order dated 03.04.2024, he was found to be adult and his case was transferred from Juvenile Justice Board to Children Court, where the appellant filed bail petition, but the same was rejected

by the impugned order.

8. I heard learned counsel for the appellant and learned APP for the State.

9. Learned counsel for the appellant submits that the appellant is innocent and falsely implicated in this case. There is no material at all to show any complicity of the appellant in the alleged offence. The whole case, as per the police report, against the appellant is based on suspicion and hearsay. The F.I.R. was lodged against unknown. The appellant was not named in the F.I.R. and no evidence worth the name has been collected by the police during investigation showing his complicity in the alleged offence.

10. He further submits that learned Children Court has rejected the bail application of the Appellant not only on irrelevant consideration but even on a wrong fact. As per the impugned order, the Appellant, as per Social Investigation Report, has a habit of intoxication, whereas there is no such reference in the Social Investigation Report. Moreover, heinous nature of the alleged offence is no ground for rejecting the bail application of a juvenile, irrespective of his age but one of the grounds given by learned Children Court to reject the bail of the Appellant is serious nature of the alleged offence.

11. He further submits that the impugned order is not in consonance with the object of the Juvenile Justice Act, which intends not to punish the child in conflict with law but to reform and rehabilitate him so that the child could be reintegrated with the society and he could become its productive member.

12. He also submits that family of the child inflict with law has been contemplated as the best and first desirable institution to achieve the object of the Act and institutionalization of a juvenile in conflict with law is a last resort under the J.J. Act, and hence, every child in conflict with law has right to be united with his family at the earliest.

13. Hence, as per the submission of learned counsel for the Appellant, the impugned order is liable to be set aside releasing the Appellant on bail allowing the appeal.

14. However, learned APP for the State defends the impugned order submitting that there is no illegality or infirmity in the same and present appeal is accordingly liable to be dismissed.

15. Before I consider the rival submissions of the parties, I deem it proper to refer to Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015, which deals with bail to juveniles. Section 12 of the Act 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 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 (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 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.

(2) When such person having been apprehended is not released on bail under subsection (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.”

(Emphasis Supplied)

16. 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 three 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.

17. 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 the child who is 16 years or above 16 years of age 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**).

18. Here, it would be also pertinent to point out that the ends of justice as used in the proviso to Section 12(1) of the J.J. Act is drastically different to one as used in the context of penal statutes. The ends of justice in the context of any Act is ascertained on the basis of the purpose and object of that Act

and the objective of the J.J. Act is to reform and rehabilitate the juveniles and not to punish them, as emerges from the preamble to the J.J. Act, which 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, hereinunder and for matters connected therewith or incidental thereto.”

(Emphasis Supplied)

19. The purpose and object of the J.J. Act manifests in Section 3 also of the J.J. Act, providing for general principles to be followed in the administration of the Act. Section 3 of the Act 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:—

.....
(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.

.....
(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.”

(Emphasis supplied)

20. The J.J. 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.

21. As such, if the 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. (Also refer to **Abhishek Vs. State, 205 CriLJ (NOC) 115 (Delhi)** and **Manoj Vs. State (NCT of Delhi, 2006 CriLJ 4759)**).

22. It also emerges from Section 3 of the Act that Reformatory or Observation Home is only 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 v, xii and xiii of Section 3 of the Act which read 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:—

.....
(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)

23. As such, Section 12 of the J.J. Act is in consonance with the purpose and object of the Act, providing 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.

24. Hence, under the J.J. Act, 2015, a child in conflict with law is not expected to be treated as an adult offender. J.J. Boards/Courts are required to adopt fundamentally a different approach while dealing with juveniles in conflict with law. They are expected to deal with such juveniles with all sensibility and responsibility, keeping in mind the purpose and object of the J.J. Act to reform and rehabilitate the child, so as to make him a responsible and productive member of the society. The society would get ruined if such children are dealt with punitive approach.

25. Now coming to the case on hand, I find that learned Children Court has rejected the bail application of the appellant on the following two grounds:

(i) The appellant, as per Social Investigation Report, has habit of intoxication.

(ii) The nature of the alleged offence against the appellant is serious in nature.

26. However, I find that no ground for denial of the bail is sustainable as per the facts of the case and relevant laws. After perusal of the Social Investigation Report, I find that there is no reference to the habit of the Appellant of intoxication.

Moreover, as per law, serious nature of the alleged offence is not a ground for denying the bail to a juvenile in conflict with law.

27. In view of the facts and circumstances of the case, the Appellant should have been enlarged on bail in his best interest. From the perusal of the Social Investigation Report, I find that the Appellant belongs to a poor family and works as a labourer along with his brother to sustain himself and his family members. He has also dropped out from Class-V of school on account of his poverty. He has neither home, nor land. He lives in a rented house. He belongs to a Scheduled Caste Community. Neither he nor his family members has any criminal antecedent. He bears a good conduct and is not a criminal and the death of the deceased, Guddu Jha has been caused on account of his falling down in the pond filled with water. As per further report the deceased had consumed *tari*, (a type of intoxicant) on the date of occurrence and he had fallen down in the pond filled with water. Even from perusal of the case diary, it transpires that there is no cogent material in the case diary to show any role of the appellant in causing death of Guddu Jha. Except hearsay, there is no evidence worth the name against the appellant, nor was he named in the F.I.R.

28. Under such facts and circumstances, there was no

reason to deny bail to the Appellant. He should have been released on bail and the District Administration might have been directed to help the Appellant as per Government Welfare Schemes to tide over his poverty, so that he could have at least resumed his education or at least could have got vocational training. As the appellant belongs to a Scheduled Caste Community, the District Administration could have been also directed to see whether it could provide home for him under Government Scheme. But instead of taking such measures in consonance with object of the J.J. Act, learned Children Court has acted irresponsibly by passing the impugned order. Instead of rehabilitating the juvenile, he has further devastated his life. This is not expected of a Court acting under the scheme of the J.J. Act.

29. Hence, the impugned order is not sustainable in the eye of law. Accordingly, the impugned order is set aside, allowing the present appeal, directing the appellant to be released on bail subject to furnishing the bail bond of Rs.10,000/- by his mother and undertaking by her by way of an affidavit that the appellant would not come in contact with any criminal and he would re-start his education through vocational school or otherwise and his developmental needs would be

taken care of, and he would attend the J.J. Board and Courts as and when required or directed.

30. Under the aforesaid facts and circumstances, learned Secretary District Legal Services Authority, Madhubani, is also directed to conduct an inquiry whether the Appellant has ration card or not and if he does not possess any such card, he should take steps to ensure that he gets ration card. He is also directed to enquire whether the Appellant is getting grains from the Public Distribution System as per Government Scheme, and if he is not getting such grains from the PDS, he must ensure that the Appellant gets such grains. He should also enquire whether the Appellant is entitled to get his home constructed by the District Administration, as per Government Scheme and if he is eligible for such home, he should also take steps to ensure that he gets such home. He is also directed to get admission of the Appellant in a local vocational training school.

31. The District Magistrate, Madhubani, is also directed to co-operate and collaborate with learned Secretary, District Legal Services Authority, Madhubani, in the aforesaid measures.

32. The Lower Court Records be sent back to the Court concerned, forthwith along with a copy of this order.

33. Let a copy of this order be also sent to learned Secretary, District Legal Services Authority, Madhubani and District Magistrate, Madhubani, for their information and needful.

(Jitendra Kumar, J.)

ravishankar/-

AFR/NAFR	AFR
CAV DATE	N.A.
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