

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.4445 of 2024

Arising Out of PS. Case No.-26 Year-2024 Thana- SONAMANI District- Araria

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Pawan Kumar Yadav Son of Mahendra Yadav @ Mahendra Kumar Yadav
(Through his natural Guardian, Namely Mahendra Yadav who is father)
Resident of Bishanpur, Ward No.06, P.S. - Jogbani, District - Araria

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Ramesh Kumar Singh, Advocate
For the Respondent/s : Mr. Abhay Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

5 19-04-2025 The instant criminal appeal under Section 101(5) of the J.J. Act, 2015 is filed assailing the order of rejection of bail by the learned Children court, Araia in Special (Child) Case No. 07 of 2024 *vide* an order dated 12.08.2024.

2. It is submitted by the learned counsel on behalf of the appellant that the appellant was apprehended by the members of S.S.B. at the international border of Nepal and India with some articles contained in five bags on their respective head. Seeing the patrolling party of S.S.B., four persons managed to flee away in the darkness of night, throwing away the bags in their possession and the appellant was apprehended. During search and seizure, narcotic substance being *ganja* weighing about 158 K.G. was recovered and seized. Thereafter,

on the basis of a complaint, Sonamani Gudam P.S. Case No. 26 of 2024 dated 21.05.2024 was lodged. Subsequently, police submitted charge sheet in the instant case under Section 8/20(b) (ii)(c) of the N.D.P.S. Act. Charge sheet has been filed against the appellant.

3. It is submitted by the learned counsel for the appellant that he was aged about sixteen years and few months on the date of commission of offence. It is further submitted by him that the learned Special Judge rejected the prayer for bail of the appellant on erroneous conclusion that there is apprehension that the appellant will again come in contact with the drug peddlers, if released on bail and grant of bail of the appellant may cause moral/physical/psychological danger to him.

4. Learned counsel relies upon Section 3 (i), (iv), (v) and (xiv) of the Juvenile Justice (Care and Protection of Children) Act, 2015, (hereinafter referred to as "the Act"). which are quoted herein below:-

"(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"

6. Learned counsel, referring to above mentioned provisions of law, 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 the best interest of the child. He further submits that the principle of family responsibility and principle of fresh start have also been recognized under the Act.

7. In reference to Section 12 of the Act, learned counsel for the petitioner submits that bail to a child in conflict with law is a rule and denial is exception.

8. Learned counsel, in the aforesaid background, submits that the learned 1st Additional Sessions Judge-cum-Special Judge, Araria, has failed to consider the scheme of the

Act and has committed irregularity in arriving at the conclusion that the petitioner will again come in contact with the peddlers, if released on bail.

9. Learned counsel further submits that the father of the petitioner is ready to take proper care of the petitioner after release on bail and shall not allow him to fall into bad company and would try to bring change in his behaviour, if required.

10. On the other hand, learned Additional Public Prosecutor submits that from perusal of Section 12 of the Act, it appears that bail is a matter of right to a child in conflict with law and denial is exception and in view of the fact that father has given an undertaking to reform his minor son, i.e. the appellant, this Court may consider to pass appropriate order in the best interest of the child in conflict with law.

11. A Bench of this Court, in **Lalu Kumar @ Lalbabu @ Lallu v 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 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, 1973.

12. Having regard to the submissions made by the parties and on perusal of the impugned order, I am of the considered opinion that there is possibility of reform in the petitioner inasmuch and the father of the appellant is ready to take proper care of the appellant after his release on bail, as such there is no likelihood that the appellant will fall into association with any known criminal(s)/smugglers. Accordingly, the conclusion arrived at by learned 1st Additional Sessions Judge-cum-Special Judge, Araria, is not sustainable in the facts and circumstances of the case.

13. Accordingly, this criminal appeal is allowed and the order, dated 12.08.2024, passed by learned 1st Additional Sessions Judge-cum-Special Judge, Araria arising out of Sonamani Gudam P.S. Case No. 26 of 2024, is hereby set aside.

14. Let the petitioner, above named, be released on bail on furnishing bail bond of Rs. 25,000/- (twenty five thousand) with two sureties of the like amount each to the satisfaction of learned 1st Additional Sessions Judge-cum-Special Judge, Araria in connection with Sonamani Gudam P.S. Case No. 26 of 2024, subject to the following conditions:-

(i) that one of the bailors shall be the father of the appellant

(ii) that the father of the appellant shall file an affidavit before the learned learned 1st Addl. Sessions Judge cum Special Judge, Araria, giving specific undertaking that after release of the appellant on bail, he will take proper care of the appellant and will not allow him to fall into bad company.,

(iii) that the another bailor must be the resident of the local limits of the learned District Court,

(iv) that the appellant shall remain personally present before the Court and/or the police, as the case may be, as and when required.

(Bibek Chaudhuri, J)

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