

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.4686 of 2024

Arising Out of PS. Case No.-436 Year-2023 Thana- NARPATGANJ District- Araria

Anurag Chaudhary S/o Anand Choudhary @ Ananda Chaudhary R/o Village-Jhumka, P.s.- Pokhali, Distt.- Sunari Pradesh No. 1 (Nepal) under guardianship of his father Anand Chaudhary (Diseased) now under guardianship of Mother namely Reeta Chaudhary @ Rita W/o Anand Chaudhary @ Ananda Chaudhary, r/o vill - Jhumka, P.S.- Pokhali, Distt.- Sunari Pradesh No. 1 (Nepal)

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Kundan Kumar Singh, Advocate

For the Respondent/s : Mr. Syed Ashfaque Ahmad, APP

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

6 31-07-2025 This is an appeal under Section 101(5) of Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter described as the 'said Act').

2. Against an order dated 02.04.2024 passed by the learned Additional Sessions Judge-I-cum-Special Judge, Araria in Special (Child) Case No.03/2024 arising out of Narpatganj (Basmatia) P.S. Case No.436 of 2023 rejecting an application for bail of the CICL.

3. Mother of the CICL has filed the instant appeal, assailing the order passed in the above case by the Children's Court.

4. It is pertinent to mention at this stage that the petitioner was apprehended by S.S.B. (Personnel) on 26.07.2023



with a bag in his hand. On search, the Arresting Officer found 380 numbers of Tramol-50 Tablets. The said tablets being in the nature of Narcotic drug were seized and a case under Section 21(C), 22, 23 of the N.D.P.S. Act was registered against the petitioner/CICL.

5. Since on the date of commission of offence the petitioner was more than 16 years of age and the 'offence complained of was "heinous offences" within the meaning of section 2(33) of the said Act, the Board sent the record to the Children Court for Trial and disposal. The Children's Court vide order dated 02.04.2024 rejected the application for bail considering Social Background Report submitted by the Probation Officer.

6. It is needless to say that Section 12 of the said Act speaks about the proviso of bail to a person who is apparently a child alleged to be a Conflict with Law. Section 12 of the said Act, runs thus:-

"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 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 fulfill 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.”

7. A plain reading of the provisions contained in



Section 12 of the said Act is that a person who is apparently a Child in Conflict with Law shall be released on bail notwithstanding anything contained in the Code of Criminal Procedure subject to the following limitations :-

(i) If there appears reasonable grounds for believing that the release is likely to bring that person into association with known criminal,

(ii) such release is likely to expose the said person to moral, physical and psychological danger and

(iii) the persons released would defeat the ends of justice.

8. The above-mentioned three limitations can be taken as defence against the prayer for bail of CICL. Such defence can be raised during hearing of the bail application by the prosecution. In other words, it is the duty of the prosecution to establish at least prima-facie, at the time of hearing of the bail petition that the release of the CICL would likely expose him to moral, physical and psychological danger or to bring him into association with any known criminal or his release would defeat the ends of justice.

9. It is found not only in the impugned order but almost all the orders passed by the learned Special Judge, Children's Court that the learned Judges come to such finding on the basis of Social Investigation Report (SIR) or Social



Background Report (SBR). It is not the duty of the learned Judge in Children's Court to build up self estimated defence against the prayer for bail of a CICL.

10. On careful perusal of the impugned order very closely, I did not find that the learned Advocate for the prosecution had brought to the notice of the learned Special Judge, Children's Court about the limitations against granting bail as contained in the proviso to Sub Section (1) of Section 12 of the said Act.

11. The Trial Court had dealt with the issue on surmise and conjecture, when he decided the case on the touch stone of morality and observed that for a child like the CICL, such offences is not desirable. On such observation he came to the finding that there was lack of control of the family members over the CICL. The provisions of the said Act is to be considered on the basis of the principles contained in Section 3(i) and (iv). No such discussion has been made by the learned Trial Judge.

12. For the reasons stated above, I am inclined to allow the instant appeal. Accordingly, the appeal is allowed and order dated 02.04.2024 passed by the learned Additional Sessions Judge-I-cum-Special Judge, Araria in Special (Child)



Case No.03/2024 arising out of Narpatganj (Basmatia) P.S. Case No.436 of 2023 is set aside.

13. Accordingly, the petitioner/CICL, above-named, may be granted bail on furnishing bail bond of Rs. 20,000/- (Rupees Twenty Thousand) with two sureties of the like amount each, one of whom must be a local surety, to the satisfaction of the learned Additional Sessions Judge-I-cum-Special Judge, Araria in connection with Special (Child) Case No.03/2024 arising out of Narpatganj (Basmatia) P.S. Case No.436 of 2023, with further condition that:-

- (I) One of the bailor must be the mother of appellant.
- (II) further condition that if on bail he shall be under the care and protection of his mother and under the supervision of the Probation Officer, who will submit quarterly report about the antecedent of appellant before the Board and if any such report is found to be unsatisfactory, the Board is at liberty to cancel the order of bail without reference to this Court.

14. With the above order, the instant appeal is allowed.

(Bibek Chaudhuri, J)

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