

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.4828 of 2024

Arising Out of PS. Case No.-35 Year-2024 Thana- MAHILA PS District- Jamui

Md. Shabaz @ Md. Shabaz Khan @ Md. Shahbaz Khan S/o Late Islam @ Huduk Resident of village- Azad Nagar, PS and District- Jamui. Under the Gaurdianship Md Abid elder brother aged about 39 years, male son of late Islam @ Huduk, resident of village- Azad Nagar, PS and District- Jamui

... .. Appellant/s

Versus

1. The State of Bihar
2. Sabina Khatoon D/o Md. Chunnu R/o Raja Nagar, ward no. 18, P.s. and Distt. - Jamui

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Satya Prakash Parasar, Adv.
For the State	:	Mr. Anand Mohan Prasad Mehta, APP

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

3 31-01-2025 The instant appeal under Section 101(5) of the Juvenile Justice (Care and Protection of Children) Act, 2015 is directed against an order dated 20th September, 2024, passed by the Learned Additional Sessions Judge-I (Childrens Court), Jamui in Children Case No. 19 of 2024, rejecting the prayer for bail of the C.I.C.L. in connection with Jamui Mahila P.S. Case No. 35 of 2024, under Sections 341/323/504/506/376/34 of the I.P.C. read with Section 4 of the POCSO Act.

2. The petitioner's prayer for bail was rejected by the learned Additional Sessions Judge-I, Jamui, on the ground that the petitioner is a juvenile, if he is enlarged on bail, he has every chance of his involvement with known criminals.



3. On perusal of the impugned order, it is found that the learned Judge did not consider Social Investigation Report of the juvenile. He also did not consider the prayer for bail in the light of Section 12 of the ***Juvenile Justice (Care and Protection of Children) Act***. Without considering the cope and object of the legislation, prayer for bail of the petitioner was rejected, as the learned Judge was hearing an application under Section 439 of the Cr.P.C.

4. Section 3 of the said Act states general principles to be followed in administration of the Act. Section 3(i) to (xvi) states the fundamental principles while implementing the provisions of the Act.

5. It is necessary to state that Section 3(i) speaks of principle of presumption of innocence. Section 3 (iv) directs that all decisions regarding the child shall be based on primary consideration that there is best interest of the children and to help the child to develop full potential. Section 3(xiv) states that all past records of any child under the Juvenile Justice system should be erased except in special circumstances.

6. Therefore, the provisions of the said Act is required to be considered on the basis of general principles of care and protection of children.



7. Section 12 of the said Act provides for the provision for bail to a person, who is apparently a child, alleged to be in conflict with law. The provisions 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 I[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.”

8. Plain reading of the above provision shows that 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, or in any other law for the time being in force, be released on bail except on certain circumstances i.e.:-

(a) If there appears reasonable ground



for believing that the release is likely to bring that person into association with any known criminal.

(b) Expose the said person to moral, physical or psychological danger or

(c) Person's release would defeat the ends of justice.

9. Learned Judge while rejecting the prayer for bail did not call for any social investigation report before deciding the prayer for bail.

10. Considering the purpose and scope of the Act and the principles laid down in Section 12 of the said Act, I am inclined to release the C.I.C.L. on bail.

11. Accordingly, the instant Criminal Appeal is allowed.

12. The order passed by the learned Additional Sessions Judge-I, (Childrens Court), Jamui in Children Case No. 19 of 2024, arising out of Jamui Mahila P.S. Case No. 35 of 2024 is set aside.

13. The petitioner be released on executing a bond of Rs. 20,000/- (Twenty thousand) with two sureties of like amount, one of whom must be one of the parents of the child with further condition that if on bail, he will not enter into his village and stay permanently in the house of his brother under the supervision of the Probation Officer.



14. The Probation Officer shall submit quarterly report to the Juvenile Justice Board regarding the activities of the petitioner. If any adverse report is filed during the pendency of the case, the order of bail shall automatically be cancelled.

(Bibek Chaudhuri, J)

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