

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.31 of 2025

Arising Out of PS. Case No.-106 Year-2019 Thana- INDUSTRIAL District- Bhagalpur

D. K @ Dilkhush Kumar S/o- Arun Yadav Village- Baijnathpur PS- Sour
Bazar Baijnathpur Dist- Saharsa

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Ashok Kumar, Advocate
For the Respondent/s : Mr. Lalan Kumar, APP

**CORAM: HONOURABLE MR. JUSTICE RUDRA PRAKASH
MISHRA**

ORAL ORDER

4 21-02-2025 Heard learned counsel for the petitioner/revisionist
and learned APP representing the State.

2. The present revision application has been filed by the petitioner/revisionist against the order dated 03.12.2024 passed in Cr. Appeal No. 44 of 2024 arising out of JJB 779/24, Industrial Area P.S. Case No. 106 of 2019 registered for offence under Section 30, 30(a), 32 of the Bihar Prohibition and Excise Act, whereby and whereunder, the learned Additional Sessions Judge I cum Special Judge (Children Court), Bhagalpur has reject the bail of the petitioner/revisionist.



3. Prosecution case, in short, is that police, during vehicle checking seized 2920 litres of illicit liquor from a Bolero and apprehended two accused persons. On interrogation, the apprehended persons disclosed that this petitioner/revisionist along with Sintu Kumar handed over the illicit liquor for delivery to Saharsa.

4. Learned counsel for the petitioner/revisionist submits that the petitioner/revisionist is juvenile and innocent and has not committed any offence as alleged in the F.I.R. and has falsely been implicated in the present case at the instance of co-accused Abhishek Kumar from whom the petitioner/revisionist has enmity. Petitioner/revisionist was not arrested on the spot and, as a matter of fact, he has no concern either with the liquor or with the vehicle from which the recovery has been made.

5. Learned counsel for the petitioner/revisionist further submits that the co-accused person has already been granted bail by a coordinate Bench of this Court vide order dated 02.09.2019 passed in Cr. Misc. No. 58426 of 2019. The petitioner/revisionist is juvenile and is languishing in jail custody since 16.05.2024.

6. He further contends that the mother of the



petitioner/revisionist who is the guardian of the revisionist undertakes that she will take care of the conduct and behaviour of the revisionist and further added that the revisionist will observe good conduct and behaviour in future. He thus submits that the revisionist may be released on bail. He further submits that the present case does not come under the purview of the provisions to Section 12 of the J.J.Act.

7. Learned counsel for the petitioner/revisionist further submits that mother of the petitioner/revisionist is ready to keep the petitioner/revisionist in a social conducive atmosphere and will not allow his son to be in company of unlawful element of the society. Learned counsel for the petitioner/revisionist further submits that the mother of the revisionist has given an undertaking that upon release on bail, juvenile will not be permitted to go into contact or association with any known criminal or allowed to be exposed to any moral, physical, or psychological danger and further that the mother of the petitioner/revisionist will ensure that the juvenile will not repeat the offence in future. Learned counsel for the petitioner/revisionist further points out that the learned court below, without considering the general principles laid down under Section 3 as well as the mandatory provisions of Section



12 of the J.J.Act, rejected the bail of the petitioner/revisionist who is conflict with law.

8. Learned counsel for the State has vehemently opposed the prayer for bail of the petitioner/revisionist.

9. Section 3 of the J.J. Act of 2015 enumerates the general principles to be followed in administration of the Act. It regulates the conduct and behaviour of all persons functioning under the Act. It states that the Central Government, the State Governments, the Board and other agencies, as the case may be, while implementing the provisions of the Act shall be guided by the fundamental principles enumerated in clauses (i) to (xvi).

Section 3 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:—

(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.

(ii) Principle of dignity and worth: All human beings shall be treated with equal dignity and rights.

(iii) Principle of participation: Every child shall have a right to be heard and to participate in all processes and decisions affecting his interest and the child's views shall be taken into consideration with due regard to the



age and maturity of the child.

(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.

(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.

(ix) Principle of non-waiver of rights: No waiver of any of the right of the child is permissible or valid, whether sought by the child or person acting on behalf of the child, or a Board or a Committee and any non-exercise of a fundamental right shall not amount to waiver.

(x) Principle of equality and non-discrimination: There shall be no discrimination against a child on any grounds including sex, caste, ethnicity, place of birth, disability and equality of access, opportunity and treatment shall be provided to every child.



(xi) Principle of right to privacy and confidentiality: Every child shall have a right to protection of his privacy and confidentiality, by all means and throughout the judicial process.

(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 re-united 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.

(xiv) Principle of fresh start: All past records of any child under the Juvenile Justice system should be erased except in special circumstances..

(xv) Principle of diversion: Measures for dealing with children in conflict with law without resorting to judicial proceedings shall be promoted unless it is in the best interest of the child or the society as a whole.

(xvi) Principles of natural justice: Basic procedural standards of fairness shall be adhered to, including the right to a fair hearing, rule against bias and the right to review, by all persons or bodies, acting in a judicial capacity under this Act.”

10. Section 12 of the Juvenile Justice (Care & Protection of Children) Act, 2015 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 available 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 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.”

11. This Court is of the view that the provision of Section 12 of the said Act relating to bail shall be taken into consideration, notwithstanding anything contained in the Code of Criminal Procedure, in the touchstone of the principle of presumption of innocence of the child. Thus, granting bail to a child in conflict with law is the rule and refusal is an exception.

12. This Court finds that in the case of ***Lalu Kumar @ Lal Babu @ Lallu vs The State of Bihar*** reported in ***2019 (4) PLJR 833***, the Court has held that the gravity and nature of the offence are immaterial for consideration of bail under the Act of 2015 and general principles as stated under Section 3 of the Act of 2015 have to be followed.

13. Having heard the submissions made by the learned counsel for the parties and having perused the materials available on record as also considering the undertaking filed by the mother of the petitioner/revisionist coupled with the fact that the co-accused person has been granted bail by a co-ordinate Bench of this Court coupled with the fact that the present case is not covered by the proviso of Section 12 of the J.J. Act, it appears that the order dated 03.12.2024 is not justified in law.

14. Accordingly, order dated 03.12.2024 passed in Cr.



Appeal No. 44 of 2024 arising out of JJB 779/24, Industrial Area P.S. Case No. 106 of 2019 passed by the the learned Additional Sessions Judge-I-cum-Special Judg (Children Court), Bhagalpur is, hereby, set aside.

15. In the result, the present revision application stands allowed.

16. Let the petitioner/revisionist, abovenamed, be released on bail on furnishing bail bonds of Rs.10,000/- (Ten thousand) with two sureties of the like amount each to the satisfaction of Court below/concerned Court in connection with Industrial Area P.S. Case No. 106 of 2019, subject to following conditions;

(i) The first bailor shall be the mother of the petitioner/revisionist who will file an affidavit, undertaking that upon the release of the petitioner/revisionist on bail, she will not permit the petitioner/revisionist to go into contact or in association with any known criminal/s.

(ii) The petitioner/revisionist shall remain present before the appellate court as well as the J.J. Board as and when required.

(iii) The Probation Officer of the district shall submit Social Investigation Report (S.I.R.) from time to time before the



concerned court below.

(Rudra Prakash Mishra, J)

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