

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.1471 of 2025

Arising Out of PS. Case No.-100 Year-2024 Thana- ISLAMPUR District- Nalanda

XXX (Real Name Withheld)

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :		
For the Appellant	:	Mr. Majid Mahboob Khan, Advocate Mr. Rashid Zafar, Advocate Mr. Pankaj Kumar, Advocate
For the State	:	Mr. Bal Mukund Prasad Sinha, APP
For the Informant	:	Mr. Madhav Raj, Advocate

CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
CAV JUDGMENT

Date : 04-05-2026

Introduction

The present appeal has been preferred by the appellant against the impugned order dated 18.12.2024, passed by learned Additional Sessions Judge-I-cum-Children Court, Biharsharif, Nalanda in Children Case No. 3 of 2024, arising out of Islampur P.S. Case No. 100 of 2024, whereby learned Children Court has rejected the application of the appellant holding that the prosecution case has been supported by inquest report as well as post-mortem report and the witnesses examined during trial. The Children Court has also referred to Social Investigation Report and Social Background Report to deny the bail. It has also been held by learned Children Court that the appellant has criminal



antecedents and he has no conducive family environment and his other family members are of criminal nature and they do not control the appellant from committing any crime. It has also been held that the alleged offence is serious in nature supported by the prosecution evidence.

Factual Background

2. Islampur P.S. Case No. 100 of 2024 was registered under Section 302 read with Section 34 IPC and Section 27 of the Arms Act against the appellant and other two co-accused.

3. Vide order dated 28.05.2024, the appellant was found to be juvenile by Juvenile Justice Board. As per school certificate, his date of birth was 23.02.2008 and hence, his age on the date of alleged occurrence i.e. 07.03.2024, was found to be 16 years and 15 days. Vide order dated, 13.08.2024, preliminary assessment of the appellant was conducted and as per report of the psychologist, he was found to be physically and mentally competent to understand the nature and consequences of the crime allegedly committed by him and hence, the case of the appellant was sent to Children Court for trial of the Appellant as an adult. After receipt of the record, learned Children Court vide order dated 07.10.2024, passed under Section 19 of the J.J.



Act, holding that the appellant is physically and mentally mature and it would be proper to conduct trial of the juvenile as adult in view of his age being 16 years and 15 days and alleged offence being heinous in nature.

4. During trial, altogether nine prosecution witnesses have been examined and now the appellant is examining witnesses in his defence and three defence witnesses have been already examined and the case is still running at the stage of defence evidence.

Prosecution Case

5. As per the written report, when the informant and his son were returning home and reached near the house of the appellant, the appellant and his father started abusing the informant and his son. On protest by the informant, the father of the appellant asked the Appellant to shoot the informant dead. In the meantime, one co-accused/Md. Akbar @ Jarla also reached the place of occurrence with pistol. In pursuance of the order of the father of the appellant, two people also brought pistol from his house and shot at the son of the informant with intent to kill him which hit him at the left side of the chest. Consequently, the son of the informant fell down on the place of occurrence and thereafter, co-accused/Md. Akbar also shot at the right side of the



chest of the informant. Thereafter, chaos developed and many people assembled there and the son of the informant was referred to Islampur Hospital where he was declared dead by the doctor.

Social Background Report of the Appellant

6. As per the Social Background report submitted by the police, the Appellant is not handicapped, though his father is handicapped and he is said to be involved in criminal activity. The mother of the Appellant is a house wife. The sister of the Appellant is 10th class pass. The family members of the Appellant has tendency to commit crime. The Appellant is unmarried and has habit of smoking and gambling. He is 10th class pass. Most of his friends are educated and elder to him and belonging to the same gender, but they have criminal background. The Appellant is not a victim of any maltreatment. It is also stated by the police that the Appellant is being used by the a gang in supply of narcotics. It is also opined by the police that the Appellant has committed crime due to neglect by his parents. It is also informed that at the place of occurrence, the Appellant was injured by the general public, who had gathered and he was taken to hospital. It is also stated in the Social Background Report that the Appellant, due to the company of people of criminal nature, had committed crime and was not being controlled by his parents, and hence, he committed even



heinous crime of murder, and hence, he needs to be lodged in observation home.

Social Investigation Report

7. As per the Social Investigation Report submitted by the Probation Officer, the father of the Appellant is 45 years of age and he is engaged in repairing work of batteries. He also does fisheries work. He is also said to be engaged in illegal activities and people of criminal nature visit his house. Presently, he is lodged in Hilsa Jail. He has general health, but he is handicapped. His mother is illiterate and is a housewife. His one sister is 10th class pass. The behavior of the Appellant with his parents and other family members is cordial. His father is co-accused in the same case but he has no other criminal antecedents. Other family members of the Appellant have no criminal antecedents. The Appellant is a Muslim by religion but he appears not to have deep interest in religion. His family has a pucca house comprising eight rooms where his family lives. Smoking and using narcotics have been also shown as his habits. There is lack of discipline in his family. He has no employment. His friends are elder in age and belong to the same gender, but they are of criminal background. He has one criminal antecedent by way of Islampur P.S. Case No. 99 of 2024 registered for the



offences punishable under Sections 25(1-B)a, 26 and 35 of the Arms Act. It has been also informed that the Appellant has no good company and conduct. He does not have interest in education as per the information from the people.

Submissions on behalf of the Appellant

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

9. Learned counsel for the appellant submits that the appellant is innocent and has falsely been implicated in this case.

10. He further submits that though in the Social Background Report and the Social Investigation Report, it has been reported that the Appellant has company of criminal people, the police or the Probation Officer have not given any details of such persons who are of criminal nature and who are in company of the Appellant. Though the police or the Probation Officer have also shown that the Appellant has habit like smoking and consuming narcotics, there is no basis for such opinion given by the police as well as the Probation Officer.

11. He also submits that except his father, no other family member has any criminal antecedents. The father of the Appellant is a co-accused in the present case and he has one more criminal antecedent by way of a theft case, in which he is



on bail.

12. He also submits that the Appellant has passed intermediate examination and he wants to pursue vocational education and he undertakes to get the Appellant enrolled in a vocational course like ITI and ensure that he does the vocational course with all sincerity.

13. He further submits that bail to a juvenile in conflict with law is a rule and denial of bail is an exception and bail can be denied to juvenile-appellant only on limited grounds, as provided in proviso to Section 12 of J.J. Act, 2015. But as per the material on record, no ground is made out to deny bail to the appellant. The observation of the Court below in the impugned order is made without any basis. The impugned order is also based on irrelevant considerations.

14. He further submits that in regard to bail under Section 12 of the J.J. Act, 2015, there no distinction made between a juvenile of 16 years of age and a juvenile of age between 16 to 18 years. As per Section 12 of J.J. Act, even if a juvenile is between 16 to 18 years of age and he is alleged to have committed heinous offence, he is entitled to get bail under Section 12 of the J.J. Act, 2015.

15. He refers to and relies upon **Lalu Kumar @ Lal**



Babu v. State of Bihar (2019 (6) BLJ 216) passed by a co-ordinate Bench of this Court. He also refers to and relies upon **Biswajit Kumar Pandey @ Lalu Kumar v. State of Bihar (2024 SCC OnLine Pat 8499)**, **Nitish Kumar v. State of Bihar (2025 SCC OnLine Pat 2421)**, **Chandan Kumar Paswan v. State of Bihar (2025 SCC OnLine Pat 2434)**, **Rakesh Rai v. State of Bihar (2025 SCC OnLine Pat 374)** and **Avnish Kumar V. State of Bihar and Anr. (2025 SCC OnLine Pat 2529)** passed by this Court.

16. He also submits that the Appellant is detained in the Observation Home for about two years since 04.04.2024.

Submissions on behalf of the State and Informant

17. However, learned APP for the State and learned counsel for the Informant vehemently oppose the prayer of the Appellant for bail submitting that the Appellant has committed heinous offence of murder.

18. They also submit that the Appellant has been found to be of 16 years and 15 days of age as per the school certificate, but he is above 18 years of age as per the birth certificate issued by Patna Municipal Corporation, which is also filed on record.

19. They further submit that as per the preliminary assessment, the Appellant has been found to be physically and



mentally competent to understand the nature and consequences of the alleged offence and he is being tried by the Children Court.

20. They further submit that the Trial is at its fag end. The prosecution evidence has been already closed and even three defence witnesses have been examined on behalf of the Appellant and the trial is still running for defence evidence due to delaying tactics of the Appellant. They also submit that before the Appellant started living in the observation home, he was 10th class pass, but during his stay at the observation home, he has passed intermediate examination with first division. It means he is doing well in the observation home. As such, his further stay in the observation home is in his best interest.

21. They also submit that the benefit of Section 12 of the J.J. Act, 2015 cannot be given to a juvenile who has been found to be between 16 to 18 years of age and alleged to have committed heinous offence.

22. They also submit that there is no illegality or infirmity in the impugned order passed by learned children Court denying bail to the appellant. The grounds for denial are well founded. They also refer to the Social Background Report and the Social Investigation Report, as per which the family



environment is not conducive for his reformation and proper development. The father of the Appellant is not only the co-accused in the present case but he is also said to be involved in illicit activities. There is also a theft case lodged against him by way of Islampur P.S. Case No. 670 of 2023.

23. They also point out that as per the Social Background Report, the Appellant is in the company of persons of criminal background.

24. They also submit that as per the prosecution evidence, the prosecution case against the Appellant is fully supported and there was even recovery of arms from his house, and hence, one case under Arms Act is also lodged against the Appellant bearing Islampur P.S. Case No. 99 of 2024.

**Legal Provisions regarding Bail to Juveniles
under the J.J. Act, 2015.**

25. Before I consider the rival submission of the parties, it would be pertinent to refer to Section 12 of the Juvenile Justice (Care and Protection) Act, 2015, which deals with bail to the Juvenile. **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 '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 subsection (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)

26. 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.

27. Hon'ble Apex Court in Juvenile in Conflict with



Law Vs. State of Rajasthan, as reported in **2024 SCC OnLine SC 5297** has also held that juvenile in conflict with law has to be necessarily released on bail unless the proviso is applicable and there must be clear finding regarding the applicability of the proviso. The relevant part of judgment reads as follows:

"6. From the phraseology used in sub-section 1 of Section 12, a juvenile in conflict with law has to be necessarily released on bail with or without surety or placed under supervision of a probation officer or under the care of any fit person unless proviso is applicable.

7.We have perused all the orders passed earlier by the JJ Board, Special Court and High Court and specially the order dated 11th December, 2023 passed by the JJ Board. There is no finding recorded that the proviso to sub-Section 1 of Section 12 is applicable to the facts of the case. Without recording the said finding, bail could not have been denied to juvenile in conflict with law.

.....

9.Though none of the courts at no stage have recorded a finding that in the facts of the case, the proviso to sub-Section 1 of Section 12 was applicable, the juvenile in conflict with law has been denied bail for last one year.

10.Hence, the impugned orders are set aside. The appeal is accordingly allowed.

11.We direct that the juvenile in conflict with law shall be released on bail without surety. However, the jurisdictional Juvenile Justice Board shall issue appropriate directions to the jurisdictional Probation Officer to keep the juvenile under supervision and to submit periodical reports to the Board about the conduct of the Juvenile."

(Emphasis supplied)

28. In Re-Exploitation of Children in Orphanages in the State of T.N. Vs. Union of Indian and Ors. as reported in **(2020) 14 SCC 327, Hon'ble Supreme Court** has held that



bail to a juvenile can be denied only on three grounds as provided in the Proviso to Section 12(1) of the J.J. Act, 2015.

The relevant part of the judgment reads as follows:

"7. Sub-section (1) makes it absolutely clear that a child alleged to be in conflict with law should 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. The only embargo created is that in case the release of the child is likely to bring him into association with known criminals or expose the child to moral, physical or psychological danger or where the release of the child would defeat the ends of justice, then bail can be denied for reasons to be recorded in writing. Even if bail is not granted, the child cannot be kept in jail or police lock-up and has to be kept in an observation home or place of safety."

(Emphasis supplied)

29. The High Court of Bombay in XYZ v. State of Maharashtra, as reported in **2023 SCC OnLine Bom 2790** has held that grounds for denial of bail must be based on material.

The relevant part of judgment reads as follows:

"6.The mandate of the aforesaid provisions requires that the CCL alleged to have committed a bailable or non bailable offence and apprehended, shall be release on bail with or without surety. The proviso to Section 12(1) puts an exception, where there are reasonable grounds to believe that the release of CCL is likely to bring him into the association with any known criminal or exposed him to moral, physical or sociological danger or his release would defeat the ends of justice. It is therefore, evident that the denial of bail to the CCL shall be for specific reasons akin to above proviso.

.....

9. There is nothing on record to indicate that the CCL is likely to come in association with the known criminals or get exposed to moral, physical or sociological danger



or his release would defeat the ends of justice. In the wake of aforesaid circumstances the case is made out to allow this Revision Application and to release the CCL on bail by setting aside the impugned order passed by the Sessions Judge, Beed. Hence following order:"

(Emphasis supplied)

30. 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**).

31. Karnataka High Court in XXX (accused before the J.J. Board) Vs. State and Others as reported in **MANU/KA/3957/2024** has also held that Section 12 of the J.J. Act, 2015 is applicable even to a juvenile who is being tried as adult by Children Court and bail to him can be denied only on the grounds as provided in the Proviso to Section 12(1) of the J.J. Act, 2015. The relevant part of judgment reads as follows:

"9. Section 12(1) of the Act provides that notwithstanding anything contained in the Code of



Criminal Procedure, 1973, or any other law for the time being in force, a child, who is produced before the Board, shall be released on bail subject to proviso to Section 12(1) of the Act of 2015. Therefore, it is very clear that even if the child is ordered to be tried as a adult, as provided under Section 18(3) of the Act of 2015, for the purpose of his bail application, Section 12 of the Act of 2015 would be applicable and his bail application cannot be considered under the provisions of Code of Criminal Procedure. As is evident from Section 12 of the Act of 2015, the only embargo in not releasing a child on bail is that there appears a reasonable ground that his release is likely to bring him into any association with any known criminal or expose him to moral, physical or psychological danger or that release of such a person would defeat the ends of justice. The three disentitlement categories contemplated in the proviso to Section 12(1) of the Act of 2015, would not come in the way of the petitioner's application being considered under Section 12 of the Act of 2015 for the following reasons:-

(a) The nature of crime committed by the petitioner is not likely to bring him into association with any known criminal or expose him to moral, physical or psychological danger; (b) There is no such report available on record which suggests that the petitioner is likely to be exposed to moral, physical and psychological danger; (c) The victim girl and her parents do not apprehend any danger from the petitioner and they have appeared before the Special Court and stated that they have no objection for enlarging the petitioner on bail."

(Emphasis supplied)

32. Allahabad High Court in Radhika (Juvenile)

Vs. State of U.P., as reported in **2019 SCC OnLine All 4911** has also held that under Section 12 of the J.J. Act, 2015, nature and character of the alleged crime is not a relevant consideration and bail can be denied to a juvenile only on the grounds as provided in the Proviso to Section 12 of the J.J. Act, 2015. The relevant



part of judgment reads as follows:

"27. It is explicit from the plain reading of Section 12 of the Act that irrespective of nature and character of the crime, if a 'child' brought by the police or appears before the Board, such child shall, notwithstanding anything contained in Code of Criminal Procedure, 1973 or any other law enforced in time, 'shall' be released on bail with or without surety under the supervision of Probation Officer or under the care of any fit person. The word 'fit person' is defined under section 2(28) of the Act, means any person prepared to owe responsibility of a child for a specific purpose and after making due enquiry in this behalf, the Board may give the custody of child in the hand of 'fit person'. Thus, it is clear that the child delinquent has got a right to be released on bail with or without surety and the gravity, nature and depth of the offence shall not come into the way.

28. However, in the proviso of Section 12(1) of the Act, there are three embargoes/riders; namely; (a) if there appears reasonable ground for believing that the release is likely to bring that person into association with any known criminal or; (b) expose that person as moral, physical or psychological danger or; (c) the person's release would defeat the ends of justice, the Board shall record the reasons for denying the bail and circumstances lead to such a decision.

29. From the plain reading of the above proviso, it has been clearly borne out that (1) the juvenile delinquent has got unqualified right to seek bail irrespective of the gravity, depth and seriousness of the offence; (2) his bail could be denied strictly on the three grounds, as mentioned under the proviso of Section 12 of the Act by the Board".

(Emphasis supplied)

33. Punjab and Haryana High Court has also held in **Vishvas vs. State of Punjab** as reported in **MANU/PH/0067/2021** that under Section 12 of J.J. Act, 2015, the nature and gravity of the alleged offence is not relevant while considering bail application to a juvenile. Bail can be denied to a



juvenile under Section 12 of the J.J. Act, 2015 only on the grounds as provided in the proviso to Section 12(1) of the J.J. Act and there must be material on record in support of the grounds. It has also held that '**ends of justice being defeated**' has to be considered in the context of the welfare of the juvenile.

The relevant part of judgment reads as follows:

"7. From a bare reading of the provisions of Section 12 of the J.J. Act, it appears that the intention of the legislature is to grant bail to the juvenile irrespective of the nature or gravity of the offence alleged to have been committed by him, and bail can be declined only in such cases where reasonable grounds are there for believing that the release is likely to bring the juvenile into association of any known criminal or expose him to moral, physical or psychological danger, or that his release would defeat the ends of justice. Meaning thereby, as per aforesaid provision, a juvenile can be denied the concession of bail, if any of the three contingencies specified under Section 12(1) of the J.J. Act is available. Similar view was observed in cases Manoj Singh vs. State of Rajasthan 2004(2) RCC 995, Lal Chand v. State of Rajasthan MANU/RH/1042/2005 : 2006(1) RCC 167, Prakash v. State of Rajasthan MANU/RH/0549/2005 : 2006(2) RCR (Criminal) 530 and Udaibhan Singh alias Bablu Singh v. State of Rajasthan MANU/RH/1038/2005 : 2005(4) Crimes 649.

8. Learned counsel for the respondent-State has also not pointed out any material available on record to show that there are reasonable grounds for believing that the petitioner is likely to come into the association of any known criminal if released on bail, or his release will expose him to moral, physical or psychological danger. The order passed is mechanical and without adhering to the provisions of Section 12(1) of the J.J. Act, which specifies that 'the Board shall record the reasons for denying the bail and circumstances that led to such a decision.'

.....
12. The Supreme Court and various High Courts, time and again have reiterated the well settled position of



law, that gravity of offence is immaterial in deciding the bail application. Bail of a child in conflict with law cannot be rejected in a routine manner and if the bail is declined, a reasoned order has to be given by the Board. A juvenile has to be released on bail mandatorily unless and until the exceptions carved out in proviso to Section 12(1) of the J.J. Act, 2015 itself are made out. The exceptions are noted being:-

- a) a reasonable ground for believing that the release is likely to bring the juvenile into association with any known criminal;
- b) his release is likely to expose him to any moral, physical or psychological danger; and
- c) his release would defeat the ends of justice.

.....
.....

14. The third exception namely 'ends of justice being defeated' has to be considered in the context of the welfare of the juvenile, as has been held by the Delhi High Court in Master Abhishek (Minor) Vs. State (Delhi) MANU/DE/0445/2005 : 2005 VI AD Delhi 18.

(Emphasis supplied)

34. Similar view has been taken by **Rajasthan**

High Court in **Gau v. State of Rajasthan, 2025** as reported in

SCC OnLine Raj 2526. The relevant part of the judgment reads

as follows :

"7.The language of Section 12 of the Act of 2015 conveys the intention of the Legislature to grant bail to the juvenile, irrespective of nature or gravity of the offence, alleged to have been committed by him and bail can be denied only in the case where there appears reasonable grounds for believing that the release is likely to bring him into association with any known criminal, or expose him to moral, physical or psychological danger, or that his release would defeat ends of justice.

(Emphasis supplied)

35. 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)

36. 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)

37. High Court of Uttaranchal in X (Juvenile in conflict with law) Vs. State of Uttarakhand, as reported in **2025 SCC OnLine Utt 157** has also held that the Juvenile Justice Act is child friendly and all decisions regarding the child under the Act should be based on primary consideration of the best interest of the child. It has been also held that any juvenile in conflict with law is entitled to get released on bail irrespective of nature of the offence. Bail could be denied to him only on the grounds as provided in the proviso to Section 12 (1) of the J.J. Act., 2015. The relevant part of judgment reads as follows:

8. For a child in conflict with law, every offence is bailable. The CIL is entitled to be released on bail as per Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (“the Act”), irrespective of the offence having been classified bailable or non bailable. The only rider is the proviso to Section 12 of the Juvenile Justice Act. The child may not be released on bail, if there are grounds to believe 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 release of the person would defeat the ends of



justice.

9. The JJ Act is, in fact, child friendly. The central theme is that the child interest is supreme. Section 3 of the JJ Act incorporates the general principles to be followed in the administration of the Act. According to which, “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. In fact, Section 3 sub section (v) speaks of primary responsibility. According to it, “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”.

.....

12.Nothing has been shown that if released the CIL would come into contact with any known criminal or expose him to moral, physical or psychological danger or his release would defeat the ends of justice.

(Emphasis supplied)

38. 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.

39. 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)**).



40. 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)

41. 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.

42. Similar view has been taken by this Court in **Biswajit Kumar Pandey @ Lalu Kumar Case** (supra), **Nitish Kumar Case** (supra), **Chandan Kumar Paswan Case** (supra), **Rakesh Rai Case** (supra) and **Avnish Kumar case** (supra).

Summary of the legal Provisions

43. Hence, it is clearly found that notwithstanding anything contained in the code of criminal procedure or any other law for time being in force, bail to a juvenile in conflict with law is governed by Section 12 of the J.J. Act, 2015.

43(1). Section 12 of the J.J. Act is equally applicable



to all juveniles in conflict with law without any discrimination of any nature. Even a juvenile, aged between 16 to 18 years and being accused of heinous offence and being tried by Children Court, is entitled to get bail under Section 12 of the J.J. Act.

43(2). The nature and seriousness of the alleged offence is not relevant for consideration of bail under Section 12 of the J.J. Act.

43(3). “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 general criminal jurisprudence. If the detention of the juvenile at Observation Home or other institutions as contemplated under the J.J. Act is helpful in protection, development and rehabilitation of the juvenile, only then it can be said that release of the child would defeat the ends of justice.

43(4). The family of the child in conflict with law is the best and first desirable institution to achieve the object of the J.J. Act. Institutionalization of a juvenile in conflict with law is the last resort and every child in conflict with law has right to be reunited with his family at the earliest.

43(5). Under Section 12 of the J.J. Act, 2015, bail to a juvenile is a rule and the refusal of the same is an exception and it can be denied only on the grounds as provided in the proviso



to Section 12(1) of the J.J. Act, 2015.

43(6). The denial of bail must be reasoned and the grounds of denial must be based on relevant facts and circumstances, as emerging from the material on record. Social Investigation Report is one of the most important such material. Perusal of such report is mandatory as per Section 15 (2) of the J.J. Act, 2015. The Board/Court is required to know not only about the offence committed by the juvenile but even about the socio-economic conditions/circumstances under which the offence was committed, so that, appropriate order in regard to the juvenile in conflict with law could be passed with intent to reform and rehabilitate the juvenile and reintegrate him with the mainstream of the society.

43(7). All resources have to be mobilized including those of the family and the community for reforming and rehabilitating the juvenile in conflict with law to make him productive member of the society. (Refer to Section 3 (vii) of the J.J. Act, 2015.)

Present Case

44. Coming to the case on hand, I find that the appellant, along with other two co-accused, is alleged to have committed murder of son of the informant and he is found to be 16 years



and 15 days old and mature to understand the nature and the consequence of the alleged offence and he is being tried by the Children Court and during trial, nine prosecution witnesses have supported the prosecution case against the appellant. Even the appellant has examined three witnesses in his defence and the trial is still at the stage of defence evidence.

45. I further find that the regular bail petition of the appellant has been rejected by learned Children Court by the impugned order on the following grounds:-

(i) The prosecution case has been supported by inquest report as well as postmortem report and the witnesses examined during the trial.

(ii) The appellant has criminal antecedents.

(iii) The family environment of the appellant is not conducive for his reformation and proper development.

(iv) The family members of the appellant are of criminal nature.

(v) The family members of the appellant do not control the appellant from committing crime.

(vi) Alleged offence is serious in nature supported by the prosecution evidence.

46. It is true that as per material on record, the father of the appellant is a co-accused in this murder case and he has also



one more criminal antecedent of theft in which he is on bail. As per social background report as well as social investigation report, the father of the appellant is stated to be involved in illegal activities.

47. I also find that the appellant has one criminal antecedent by way of criminal case registered under the Arms Act and in prosecution evidence it has come that Arms and ammunition were recovered from the house of the appellant on raid by the Police.

48. I further find that in the Observation Home, the appellant has passed intermediate examination in 1st division. Hence, it may be said that reformatory process is going well in the Observation Home.

49. Seeing the criminal background of the father of the appellant and criminal antecedent of the appellant himself and recovery of arms and ammunition from the house of the appellant, release of the appellant on bail would defeat the ends of justice.

50. Moreover, the reformation process of the appellant is going on well in the Observation Home as he is properly pursuing his studies there. He has passed intermediate examination in first division. Concerned authority of the



Observation Home is directed to ensure that the appellant pursues his studies further or he is given vocational training.

51. Hence, there is no illegality or infirmity in the impugned order. The present Appeal is, accordingly, dismissed.

52. LCR be sent back to the Court concerned forthwith along with a copy of this judgment.

53. With approval of Hon’ble the Chief Justice, circulate a copy of this judgment amongst the Presiding Officers of the Juvenile Justice Boards and the Children Courts, and also send a copy of this judgment to the Director of Bihar Judicial Academy for discussion on this judgment in the training programmes for the concerned Judicial Officers.

(Jitendra Kumar, J.)

Chandan/Ravi
Shankar/Shoaib

AFR/NAFR	A.F.R
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