

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.2068 of 2024**

Arising Out of PS. Case No.-298 Year-2020 Thana- MADHAURAH District- Saran

XXX, (Real name withheld)

... .. Appellant

Versus

- 1. The State of Bihar
- 2. XXX, (Real name withheld)

... .. Respondents

Appearance :

For the Appellant	:	Mr. Narendra Kumar, Advocate Mr. Akash Ambuj, Advocate Ms. Anushka Kumari, Advocate
For the State	:	Mrs. Anita Kumari Singh, APP

**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 15.04.2023, passed by learned Ist Additional Sessions Judge, Saran at Chhapra in C.C. Case No. 11 of 2022 (Marhowrah), P.S. Case No. 298 of 2020, registered against the Appellant and other two co-accused for the offence punishable under Section 376(D) of the Indian Penal Code and Section 67(A)(c) of the I.T. Act, 2008, whereby the regular bail petition of the Appellant has been rejected by learned Court below, holding as follows:



“7. Thus, it is conspicuous from SBR and SIR that juvenile petitioner is in conflict with law on account of friends of his age and he is in conflict with law on account of dispute relating to crop. Hence, I am of view that release of such juvenile petitioner on bail may bring him into association of same set of persons under whose influence he is in conflict with law. It would also expose him to moral, physical and psychological danger and it would also defeat the ends of justice. Therefore, taking care of best interest of juvenile, I am of the view that he should not be enlarged on bail. Accordingly, bail petition of juvenile petitioner namely Pankaj Kumar is hereby rejected. Office Clerk of this court is directed to send a copy of this order to the learned Jail Superintendent for necessary course of action. Put up this record on 03.05.2023 for prosecution evidence.”

Factual Background

2. The prosecution emerging from the written report filed by the victim is that on 12.04.2020 at 7:00 PM when she had gone for attending the call of nature, her modesty was outraged and gang rape was committed upon her by the Appellant and two other co-accused.

3. After investigation, charge-sheet was submitted against the Appellant and other co-accused for the offence punishable under Section 376(D) of the Indian Penal Code and Section 4 and 6 of the POCSO Act on 02.07.2020. Subsequently, case of one of the co-accused was separated and sent to the J.J. Board vide order dated 15.01.2021 passed by learned Judicial Magistrate. Vide order dated 26.02.2021/10.08.2021 the case of the Appellant was also separated and sent to the J.J. Board. Vide order dated 15.12.2021, the Appellant was declared juvenile



under Section 94(2)(ii) of the J.J. Act and his age was found to be 16 years 10 months and 3 days. Vide order dated 15.07.2022, the J.J. Board conducted preliminary assessment under Section 15 of the J.J. Act and he was found to be physically and mentally mature and hence, in view of the heinous nature of the alleged offence of gang rape and the age of the Appellant being between 16 and 18 years, the case of the Appellant was transferred to the Additional Sessions Judge-I-cum-Children Court, Saran at Chhapra, for his trial as an adult. Learned Children Court, vide the impugned order dated 15.04.2023 has rejected the regular bail application of the Appellant. Hence, the Appellant is before this Court.

4. Trial has already commenced. And during trial, charge has been framed under Section 376(D) and Section 4 and 6 of the POCSO Act and the trial the case is at the stage of prosecution evidence. So far, five prosecution witnesses have been examined and all of them have been declared hostile by the prosecution.

Social Background Report of the Appellant

5. As per the Social Background Report of the Appellant, the Appellant is physically fit having no physical handicap. In his family, besides his parents, he has one brother and two sisters. The father of the Appellant is illiterate and works as



labourer. His mother is a housewife. His both sisters are married whereas his brother is also a labourer and his parents also work as labourer. The conduct of the Appellant towards his family members is cordial. He has general interest in religion. The family of the Appellant has one pucca house and two katha of cultivable land. The Appellant is said to have a habit of drinking liquor. The Appellant is said to have studied up to class three from a government school and he has no technical education. He works as a labourer and helps the family in its maintenance. His friends are said to be of different age. Some of them are elder, whereas some are younger to him and some are equal to his age. The conduct of the Appellant towards his friends are normal and good towards his neighbours and villagers. It is also reported that the wheat crop of the Appellant was burnt by a girl from Kanpura Village. Hence, he had altercation with that girl. It is also opined by the police that poor economic condition and immediate dispute regarding burning of wheat crop belonging to the Appellant was the factor for commission of the offence.

Social Investigation Report of the Appellant

6. As per the Social Investigation Report, the Appellant has no bad habit, like smoking, drinking liquor or any other bad habits and he has studied up to class fifth. Most of his



friends are illiterate and elder to him and he has not been victim of any crime. It has been also opined that the occurrence had taken place on account of the circumstances of burning of his wheat crop.

Submissions on behalf of the Appellant

7. I heard learned counsel for the appellant and learned APP for the State.

8. Learned counsel for the appellant submits that the appellant is innocent and has falsely been implicated in this case on account of previous enmity due to land dispute between the family of the Appellant and the Informant. There is undue delay of four days without any persuasive explanation.

9. Learned counsel for the appellant further submits that both co-accused have been also acquitted of all the charges against them. The minor co-accused has been acquitted by learned J.J. Board, Saran at Chhapra itself in J.J.B. Case No. 747 of 2022 vide order dated 18.01.2022, whereas adult co-accused, Manu Kumar @ Monu Kumar has been acquitted by Division Bench of this Court in Cr. Appeal (DB) No. 200 of 2023 vide judgment dated 10.02.2026.

10. He further submits that grounds for rejection of bail to the appellant by learned Children Court are not



sustainable as per material on record.

11. He further submits that bail to the a juvenile in conflict with law is a rule and denial of bail is an exception and bail can be denied to a juvenile-appellant only on limited grounds, as provided in the 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.

12. 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. Here, 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) and 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.

13. He also submits that the Appellant is detained in the Observation Home since 16.04.2020.

14. Hence, in view of the learned counsel for the appellant, the impugned order is not sustainable in the eye of law and liable to be set aside, and the appeal deserves to be allowed, releasing the appellant on bail.

Submissions on behalf of the State

15. However, learned APP for the State vehemently opposes the prayer of the Appellant for bail submitting that the Appellant has committed heinous offence of gang rape.

16. He further submits that after preliminary assessment, the appellant has been found to be physically and mentally mature to understand the consequences of the alleged offence and he is being tried as adult by children Court.

17. He also submits 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.

18. He also submits 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. In view of learned A.P.P, the appeal is liable to be dismissed.

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

19. 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 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 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)

20. 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.

21. 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)

22. 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)

23. 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 released 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)



24. 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**).

25. 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)

26. 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)

27. 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)

28. 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)

29. 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)

30. 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)

31. 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)

32. 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.

33. 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)**).

34. 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)



35. 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.

36. 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

37. 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.

37(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.

37(2). The nature and seriousness of the alleged offence is not relevant for consideration of bail under Section 12 of the J.J. Act.

37(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.

37(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.

37(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.

37(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.

37(7). All resources have to be mobilised 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

38. Coming to the case on hand, I find that the appellant, along with other two co-accused, has been alleged to have committed gang rape. However, during trial, five prosecution witnesses have been examined, but none of them has supported the prosecution case.



39. I further find that both co-accused have been already acquitted – the juvenile co-accused has been acquitted by J.J. Board itself, whereas other co-accused has been acquitted by the Appellate Court.

40. I further find that the appellant has been assessed to be 16 years 10 months and 3 days old on the date of commission of the offence and after preliminary assessment, he has been found to be physically and mentally mature to understand the consequences of the alleged offence and he is being tried as adult by children Court.

41. I further find that the bail application of the appellant has been rejected on the following grounds :

(i) The release of the appellant may bring him into association of criminal persons.

(ii) The release of the appellant may expose him to moral, physical and psychological danger.

(iii) The release of the appellant may defeat the ends of justice.

42. However, after scrutiny of the material on record, I find that none of the grounds for rejection of bail by learned Children Court to the appellant is sustainable. There is no material on record to show that the appellant was in the



company of known criminals, because no details of such criminals, with whom the appellant was associated, has been given either in the Social Background Report or Social Investigation Report. There is also nothing on record to show that release of the appellant would expose him to moral, physical or psychological danger.

43. I also find that learned Children Court has wrongly held that release of the appellant may defeat the ends of justice. Learned Children Court appears not to be aware of the meaning and import of “ends of justice” in context of the Juvenile Justice Act. The ends of justice 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 could be said that release of the child would defeat the ends of justice. But as per the facts and circumstances of the case, one cannot say that release of the appellant would defeat the ends of justice. I find that none of the family members has any criminal antecedents and even the appellant has no criminal antecedent and on account of poverty, the appellant and his father work as laborers. As far as report regarding bad habits of the Appellant is



concerned, like smoking, drinking etc., there is no credible material on record to show that the appellant has any such bad habits.

44. Moreover, the family is the best and first desirable institution for reformation and rehabilitation of the child, if there is conducive environment at home and no one can say that family environment of the Appellant is not proper for him. No one can take better care of any child than the parents of the child. The poverty of the appellant and his family is no doubt a great hurdle in proper development of the appellant. But on such ground, the right of the child to get re-united with the family at the earliest could not be denied to the appellant.

45. Hence, release of the appellant with certain conditions and some positive measures would be in the best interest of the Appellant.

46. Accordingly, the present appeal is allowed directing the appellant to be released on bail, subject to furnishing the bail bond of Rs.10,000/- and undertaking by his father by way of affidavit that he would keep vigil on the appellant regarding his habits and he would not allow the appellant to come in contact with any criminal persons and take care of other developmental needs of the appellant and the appellant would attend the Court



as and when required or directed.

47. As the appellant and his family are suffering from poverty, learned Secretary, District Legal Services Authority, Saran is directed to assist the appellant in getting benefit of welfare schemes of the Government like Rasan Card and getting grains from P.D.S. under the Government scheme, if he is not already getting such grains. District Magistrate, Saran at Chhapra is also directed to cooperate and collaborate with learned Secretary, District Legal Services Authority, Saran in the aforesaid efforts. Learned Secretary DLSA and District Magistrate would also explore the possibility of getting loan by the appellant and his father for doing some business or any other activity for their livelihood.

48. The Lower Court Records be sent back to the Court concerned forthwith along with a copy of this judgment.

49. Let a copy of this order be also sent to learned Secretary, District Legal Services Authority, Saran and District Magistrate, Saran at Chhapra for their information and needful.

50. 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/Shoaib

AFR/NAFR	A.F.R
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