

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.5154 of 2024
In
CRIMINAL REVISION No.512 of 2024

Arising Out of PS. Case No.-100 Year-2020 Thana- BAGENGOLA District- Buxar
=====

Rakesh Rai Son of Sanjay Rai Resident of Village - Pokhraha, P.S. -
Bagengola, District - Buxar

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant	:	Ms. Bandana Sing, Advocate
		Mr. Sudhir Kumar Singh, Advocate
For the State	:	Ms. Anita Kumari Singh, APP

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CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL JUDGMENT
Date : 17-01-2025

The present Criminal Appeal has been preferred by the appellant against the impugned order dated 01.11.2023 passed by the learned Additional Sessions Judge 1st cum Special Judge SC/ST & Children Court, Buxar, in Adult Children Case No. 14 of 2023 arising out of Bagengola P.S. Case No. 100 of 2020 whereby the learned court below has rejected the bail petition of the appellant holding as follows:-

“Considering the aforesaid facts and circumstances of this case and from perusal of case record, including the Social Investigation Report, it is found that the CICL “R” had been actively involved in this case and during investigation it has come that CICL “R”, had

committing the murder of father of informant in connivance with other co-accused persons. The CICL “R” has also associated with criminal activities and had a bad company. Therefore, in the aforesaid circumstances there is every chance for the CICL “R” that his release would likely to bring him into association with other known criminals or expose him to moral, physical and psychological danger and his release would also defeat the ends of justice. Hence the prayer of bail of CICL “R” is hereby disposed off.”

2. The prosecution case as emerging from the *Fardbeyan* of the informant is that at 2:00 PM on 20.08.2024 when the informant and his father were cutting grass for fodder of their animals, co-villagers Vijay Pandey, Ajay Pandey, Uma Shankar Pandey, Vikramaditya Pandey, Manish Pandey, Rakesh Rai (appellant herein) and Sanjay Rai along with four unknown persons came to the place of occurrence with country made pistols and guns in their hands and soon after visiting the place, Vijay Pandey stated that they had to kill the informant and his father, both, because they are litigating in court in regard to the land. Vijay Pandey also fired at his father hitting him near the left ear. Ajay Pandey fired at the informant hitting near his neck. Uma Shankar Pandey also fired at his father hitting his back. His father fell down. Rest persons also fired at the informant. But he was able to escape from the firing. Thereafter, all the accused persons went back doing firing. The incident has been witnessed to by three persons including Hardev Rai and Pravin

Kumar Pandey who were also cutting grass. His father died on the place of occurrence itself.

3. On the claim of the appellant to be juvenile, his case was separated and sent to the Juvenile Justice Board, Buxar, and after inquiry, he was declared to be juvenile vide order dated 9.4.2021 and, thereafter, on preliminary assessment by the Juvenile Justice Board, Begusarai, his case was transferred to Children Court for trial under Section 18(3) of Juvenile Justice Act, 2015 vide order dated 21.06.2023 and, hence, it was registered as Adult Children Case No. 14 of 2023 by the Children Court. The appellant moved for regular bail before the Children Court and the same was rejected by the impugned order.

4. Social Investigation Report is also on record. As per the this report, the petitioner has no physical handicap. His grand-parents are illiterate whereas the father of the appellant is 9th class pass and he is said to be working in *Rajasthan* as a labourer. His mother is also an illiterate lady and house wife. His younger brother is 12 years of age and student of 7th Class. His younger sister is also 11 years old and she is also a school student. Health of all the family members are normal. The relationship of the petitioner has been shown to be cordial with

all the family members. It is also stated that prior to the present occurrence, no family member was involved in any criminal case. However, subsequent to the occurrence, there is one more criminal Case registered against his father bearing Bagengola P.S. Case No. 17 of 2021 for the offences punishable under Sections 307 and other allied Sections of the Indian Penal Code and Section 27 of the Arms Act However, his father is on bail in this case. All the family members are shown to be religious and traditional. The family has three *Bighas* agricultural land and one small house. However, the appellant has no habit of smoking, drinking, taking drugs, gambling and begging. However, he has no habit of playing indoor or outdoor games, reading books, or doing religious activities or drawing painting, acting, singing or any other activities. But the appellant has been shown to be a disciplined child. He is also shown to be working as a labourer in a private company in Rajasthan. He is shown to have been contributing to the maintenance of the joint family. The appellant is illiterate and has no vocational training either. Most of his friends are also illiterate. The attitude of the appellant towards his friends is normal. He is not shown to be victim of any offence. He has been shown to be involved in the alleged offence on account of influence of his friends. It has also

been shown that the family of the appellant comes in low income group and family members are either illiterate or hardly literate. During the childhood, he had been shown to be living at the house of his father's sister, where he took elementary education. But on account of his lack of interest in studies, he was sent back to the parents, who were working in Rajasthan. He joined in a private company as a labourer. But during corona period, he came back to his home. There was already land dispute between the appellant and the informant side. The educational training has been recommended for the appellant for his rehabilitation.

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

6. Learned counsel for the appellant submits that the impugned order is not sustainable in the eye of law. The learned Children Court has erroneously rejected the regular bail petition of the appellant on irrelevant consideration. He also refers to and relies upon a judgment of this Court titled- **Biswajit Kumar Pandey @ Lalu Kumar Vs. State of Bihar**, reported in 2024 SCC OnLine Pat 8499.

7. However, learned APP for the State defends the impugned judgment submitting that there is no illegality or

infirmity in it. Hence, the present petition is liable to be dismissed.

8. 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)

9. In **Biswajit Kumar Pandey case** (supra), this Court

had discussed the statutory provisions of the Juvenile Justice Act, 2015 and binding judicial precedents in details and held as follows:-

“10. 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 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.

11. Use of the expression- “such person shall be released on bail” in Section 12(1) of the Act also shows that grant of bail to a juvenile is mandatory unless grounds for denial are present.

12. 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 a child who has completed or is above the age of 16 years 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**)

13. It also emerges that Section 12 of the Act, 2015 is in consonance with the object of the J.J. Act, which intends not to punish juveniles in conflict with law but to reform and rehabilitate them by proper care, protection, development and social reintegration by adopting a child friendly approach in the adjudication and disposal of matters in their best interest. The 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 would be self-destructive for the society.

14. The object of the Act manifests not only in the preamble to the Act but also in Section 3 of the Act providing for general principles to be followed in administration of the Act.

15. It also emerges that Reformatory or Observation Home is one of the measures contemplated by our legislature for

reforming and rehabilitating the delinquent children. However, the family of the child in conflict with 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 iv, v, xii and xiii of Section 3 of the Act of 2015 which are 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.

(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.
.....

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(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.”

(Emphasis Supplied)

16. In view of the aforesaid object and principles of the J.J. Act, 2015, Section 12 of the Act provides for mandatory bail to a juvenile in conflict with law unless the grounds as provided in the proviso to Section 12(1) of the Act is/are present, so that the child is re-united with his family at the earliest opportunity and the protection, development, reformation and rehabilitation of the child is ensured.

17. Hence, as per the J.J. Act of 2015, a child in conflict with law is not expected to be treated as an adult offender. Fundamentally a different approach is required while dealing

with juvenile in conflict with law. All Courts are required to deal with juvenile in conflict with law with all sensibility and responsibility keeping in mind the object of the J.J. Act to reform and rehabilitate the child, so that he can become a responsible and productive member of the society. The society would get ruined if such children are dealt with punitive and not reformatory approach.”

(Emphasis Supplied)

10. Coming to the case on hand, I find that the learned Children Court has rejected the bail petition of the appellant on the grounds that he is actively involved in the alleged offence of murder and he is also associated with criminal activities and has a bad company and his release would bring him into association with other known criminals or expose him to moral, physical and psychological danger and his release would defeat the ends of justice.

11. However, as per the statutory provisions and binding judicial precedents, I find that involvement of the appellant in offence of serious nature is no ground for denying bail to a juvenile.

12. Moreover, the observation of learned court below that the appellant is associated with criminal activities and he has bad company is baseless. The Social Investigation Report does not show that the appellant was involved in any criminal activities prior to the present case. In fact, he was working as a labourer in Rajasthan on account of poor condition of his

family. No crime has been shown to have been committed by him or any members of his family prior to the present case.

13. Even finding of the Children Court that the release of the appellant would bring him into bad company is also unfounded. As per Social Investigation Report, I do not find that he was a member of any criminal gang and his release may bring him into company of that gang.

14. There is also no possibility, as per Social Investigation Report, of exposing the appellant to moral, physical or psychological danger, if he is released on bail.

15. I also find that learned Children Court has misconceived the ends of justice when he has held that release of the appellant would defeat the ends of justice. Perhaps, learned Court below has been swayed by the seriousness of the alleged offence of murder. But ends of justice in the context of J.J. Act is totally different. The purpose and object of the J.J. Act is to reform and rehabilitate the juveniles and not to punish them. The preamble of the Act 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, hereinafter and for matters connected therewith or incidental thereto.”

16. As such, if 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)**). Moreover, the family is considered as the best and most desirable institution for ensuring welfare and rehabilitation of the child, if the family environment is conducive for the development of the child. In such situation, the release of the appellant on bail would serve and promote the ends of justice better than detaining the appellant in the observation home.

17. Hence, the impugned order is not sustainable in the eye of law. It is accordingly set aside allowing the present petition, directing the appellant to be released on bail subject to furnishing bail bonds of Rs.10,000/- (Rs. Ten Thousand) by his father and mother each subject to the following additional conditions:

(i) The father and mother of the appellant undertake by way of affidavit that the appellant would not come into contact with any criminal;

(ii) They further undertake to provide vocational training to the petitioner and;

(iii) They further undertake to ensure that the petitioner would attend the J.J. Board and Courts as and when required or directed.

(Jitendra Kumar, J.)

S.Ali/-

AFR/NAFR	AFR
CAV DATE	NA
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