

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.341 of 2023

Arising Out of PS. Case No.-387 Year-2022 Thana- SONBERSA District- Sitamarhi

SHASHI KUMAR S/o- Amrendra Mahto through the Gardian Sri Amrendra Mahto At PO- Araria PS- Kanauhali Dist- Sitamarhi

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Sita Ram Prasad, Advocate
For the Respondent/s : Mr.Raj Ballabh Singh, APP

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

- 3 27-09-2023 1. Heard learned Counsel for the petitioner and learned Additional Public Prosecutor appearing for the State.
2. This revision application has been filed against the judgment and order dated 24.03.2023, passed by learned P.O., Children Court-cum-Additional District & Sessions Judge-1st, Sitamarhi in Criminal Appeal No. 13 of 2023. By impugned order, the learned P.O., Children Court-cum-Additional District & Sessions Judge-1st, Sitamarhi has affirmed the order dated 03.02.2023, passed by the learned Principal Magistrate, J.J.B., Sitamarhi in Juvenile Justice Board No. 1915 of 2022, arising out of Sonbarsa Police Station Case No. 387 of 2022, registered for the offences punishable under Sections 386, 302, 201/34 of the Indian Penal Code.
3. The prosecution case, in brief, as per the First



Information Report, is that on 23.10.2022 at about 12 pm, 3 pm and 6 pm, accused Suraj Kumar came to the shop of the informant, threatened him and demanded a sum of Rs. 5500/- as ransom. Thereafter, the petitioner along with others reached at the house of the informant. Lateron, the son of the informant namely Rohit went to his aunt's house but when he did not return back till late night, search was made. At about 12.30 am, informant's sister had telephonically informed the informant about arrival of his son along with the petitioner and other co-accused. Ultimately, on 24.10.2022, he came to know about the recovery of a dead body near Jheem river, Kachahari and he identified the dead body as his son.

4. Learned counsel for the petitioner submits that the petitioner was declared juvenile by order dated 09.01.2023 passed by the learned Principal Magistrate, J.J.B., Sitamarhi after coming to the conclusion that the petitioner was minor at the time of alleged occurrence and was aged about 17 years, 08 months and 13 days. He next submits that by the impugned order, the learned P.O., Children Court-cum-Additional District & Sessions Judge-1st, Sitamarhi has rejected the prayer of the petitioner for bail on erroneous conclusion that in case, the petitioner be granted bail, he would fall into association with



any known criminal (s) and there is every apprehension of his psychological and moral danger and that his release may also defeat the ends of justice. He next submits that learned P.O., Children Court-cum-Additional District & Sessions Judge-1st, Sitamarhi did not consider the social investigation report in correct legal perspective. The petitioner is in custody since 08.12.2022.

5. Learned Counsel relies upon ***Sections 3 (i), (iv), (v) and (xiv) of the Juvenile Justice (Care and Protection of Children) Act, 2015***, (hereinafter referred to as “the Act”), which are quoted herein below:-

“ 3(i) *Principle of presumption of innocence:- Any child shall be presumed to be an innocent of any mala fide or criminal intent up to the age of eighteen years.*

3 (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.*

3 (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.*

3 (xiv) *Principle of fresh start:- All past*



records of any child under the Juvenile Justice system should be erased except in special circumstances.”

6. Learned Counsel, referring to above mentioned provisions of law, submits that as per the scheme of the Act there is presumption of innocence of a child in conflict with law and all decisions regarding the child shall be taken in consonance with the principle of the best interest of the child. He further submits that the principle of family responsibility and principle of fresh start have also been recognized under the Act.

7. In reference to **Section 12 of the Act**, learned Counsel for the petitioner submits that bail to a child in conflict with law is a rule and denial is exception.

8. Learned Counsel, in the aforesaid background, submits that the learned P.O., Children Court-cum-Additional District & Sessions Judge-1st, Sitamarhi has failed to consider the scheme of the Act and has committed irregularity in arriving at the conclusion that in case, the petitioner be granted bail, he would fall into association with any known criminal(s) and there is every apprehension of his psychological and moral danger and that his release may also defeat the ends of justice.

9. Learned Counsel further submits that the mother of the petitioner is ready to take proper care of the petitioner after



release on bail and shall not allow him to fall into bad company and would try to bring change in his behaviour, if required.

10. On the other hand, learned Additional Public Prosecutor submits that from perusal of **Section 12 of the Act**, it appears that bail is a matter of right to a child in conflict with law and denial is exception and in view of the fact that mother has given an undertaking to reform her child, i.e. the petitioner, this Court may consider to pass appropriate order in the best interest of the child in conflict with law.

11. A Bench of this Court, in the case of **Lalu Kumar @ Lalbabu @ Lallu v. State of Bihar**, reported in **2019 (4) PLJR 833**, while interpreting **Section 12 of the Act** has laid down the principle that the Board while considering bail of a Juvenile is duty bound to follow the principle of 'best interest', 'repatriation' and 'restoration' of child. The gravity and nature of offence are immaterial for consideration of bail of a juvenile. As per **Section 12 of the Act of 2015**, an application for bail is not decided by reference to classification of offences as bailable or non-bailable under the Criminal Procedure Code.

12. Having regard to the submissions made by the parties and on perusal of the impugned order, I am of the considered opinion that there is possibility of reform in the



petitioner inasmuch as he has got no criminal antecedent and the mother of the petitioner is ready to take proper care of the petitioner after his release on bail as such there is no likelihood that he would fall into association with any known criminal(s). As such, the conclusion arrived at by learned P.O., Children Court-cum-Additional District & Sessions Judge-1st, Sitamarhi, is not sustainable in the facts and circumstances of the case.

13. Accordingly, this revision application is allowed and the order 24.03.2023, passed by learned P.O., Children Court-cum-Additional District & Sessions Judge-1st, Sitamarhi in Criminal Appeal No. 13 of 2023 and order dated 03.02.2023, passed by Principal Magistrate, Juvenile Justice Board, Sitamarhi are hereby set aside.

14. Let the petitioner, above named, be released on bail on furnishing bail bond of Rs. 10,000/- (ten thousand) each with two sureties of the like amount each to the satisfaction of learned Principal Magistrate, J.J.B., Sitamarhi, in connection with in Juvenile Justice Board No. 1915 of 2022, arising out of Sonbarsa Police Station Case No. 387 of 2022 subject to the following conditions:-

(i) that one of the bailors shall be the mother of the petitioner;



(ii) that the mother of the petitioner shall file an affidavit before the learned Juvenile Justice Board, Sitamarhi, giving specific undertaking that after release of the petitioner on bail, she will take proper care of the petitioner and will not allow him to fall into bad company.

(Anil Kumar Sinha, J)

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