

(2023) 11 PAT CK 0036

Patna High Court

Case No: Criminal Appeal (SJ) No. 3462 Of 2023

XXX

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision: Nov. 6, 2023

Acts Referred:

- Indian Penal Code, 1860 - Section 34, 201, 302, 363, 379, 411
- Juvenile Justice (Care and Protection of Children) Act, 2015 - Section 3(i), 3(iv), 3(v), 3(xiv), 12

Hon'ble Judges: Chandra Shekhar Jha, J

Bench: Single Bench

Advocate: Gauri Shankar Thakur, Syed Ashfaque Ahmad

Final Decision: Allowed

Judgement

1. Heard the parties.
2. The present appeal is being preferred against the order dated 26.06.2023 passed by learned 1st Additional Sessions Judge-cum-Special Judge, Juvenile Justice (Care and Protection of Children) Court, West Champaran, Bettiah in Special Child Case No.10 of 2023 arising out of Bettiah Muffasil P.S. Case No.757 of 2022 by which the learned Court has refused to enlarge the appellant on bail registered for offences punishable under Sections 363, 302, 201, 379 and 411 read with 34 of the Indian Penal Code.
3. The case of the prosecution in brief is that the husband of the informant namely, Munna Chaurasiya was a driver and he used to work as driver for the Swift Dezire Car of one Samar Paswan. On 30.08.2022, her husband went to 'Thori'. At about 11:00 A.M. there had been talk of the informant with her husband, when he disclosed that he would not come to home for meal in the afternoon. Again, on 3:00 P.M. the husband of the informant made video call to her when the informant saw that her husband was eating meat and two persons were also sitting there. The informant saw them and the husband of the informant disclosed that he came along with those two persons. At about 7:00 P.M. the informant made video call on the mobile phone of her husband then saw that her husband was on driving seat and the same two persons were sitting behind taking snacks. The husband of the informant disclosed that he would reach home within half an hour and thereafter the phone got in switch off mode. The family members and the vehicle owner started searching of the husband of the informant but could not trace out.
4. Learned counsel for the appellant submits that the appellant is not named in F.I.R., and he is in observation home since 21.12.2022. Learned counsel for the appellant

further submits that the name of the appellant surfaced during the course of investigation on the basis of confessional statement of co-accused. Learned counsel for the appellant submits that the appellant was declared juvenile by the learned Juvenile Justice Board, West Champaran at Bettiah after coming to the conclusion that the appellant was minor at the time of alleged occurrence and was aged about 17 years 09 month. Learned counsel further submits that against the order passed by Juvenile Justice Board, West Champaran, Bettiah refusing the bail application, the appellant preferred B.P. No.1475 of 2023 before the learned 1st Additional Sessions Judge-cum-Special Judge, West Champaran, Bettiah who, by the impugned order, arrived at a conclusion that juvenile along with others made a program to visit Thori by a hired Swift Dezire car, after visiting the whole day, they came back to Bettiah in the evening and due to dispute with the driver Munna Chaurasia regarding the fare, the juvenile murdered the driver of the Swift Dezire Car with the help of co-accused person and taken away the Car for sale in Raxaul and sold it to one Gufran Ali. The said Gufran Ali told the name of the juvenile and another accused namely Amrit Ojha who sold the Swift Dezire Car to him. The social investigation report suggests that the juvenile / appellant is a student of Class -X and due to non living with his parents, he has come in bad company. The release of the petitioner will not be in his interest because his release is likely to bring him in association with known criminal and also expose him to moral, physical and psychological danger and defeat the ends of justice. He next submits that charge sheet has already been submitted in the case and there is no chance that the appellant would tamper with the evidences, if released on bail. He next submits that one of the co-accused namely, Saurabh Kumar Shukla @ Saurav Shukla @ Saurabh Shukla has already granted bail by one of the learned co-ordinate Bench of this Court vide order dated 07.08.2023 passed in Criminal Revision No. 485 / 2023. He also submits that petitioner has not put on T.I. Parade.

5. Learned counsel for the appellant relies upon Section 3 (i), (iv), (v) & (xiv) of the Juvenile Justice (Care and Protection of Children) Act, 2015 {hereinafter referred to as 'the Act'} which is quoted hereinbelow:-

“(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.

(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.

(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 while referring to the above mentioned provisions 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 best interest of the child. Learned counsel 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 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 court below has failed to consider the scheme of the Act and has committed material irregularity in arriving at the conclusion that release of appellant would bring him in association with bad elements of society.

9. On the other hand, learned counsel for the State submits that from perusal of Section 12 of the Act, it appears that bail is a matter of right to the appellant and denial is exception as such this court may consider to pass appropriate order in accordance with the provisions of the Act for release the appellant on bail in the best interest of the child.

10. From perusal of the record, it appears that appellant has remained in observation home since 21.12.2022.

11. The Division Bench of this Court in the case of *Lalu Kumar and Ors. Vs. The 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 the 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 Code of Criminal Procedure.

12. Having regard to the submissions made by the parties and taking into consideration the material on record, I am of the considered opinion that the name of the appellant surfaced during the course of investigation on the basis of confessional statement of co-accused. Further, taking into consideration the materials on record as well as the period of incarceration of the appellant and in the best interest of CICL, this Court is of the considered view that the impugned order passed by the court below is not sustainable in the eyes of law inasmuch as the same is not in consonance with the aims and objectives of the Act.

13. In the result, I am of the opinion that the learned court below has committed material irregularity in arriving at the conclusion that grant of bail to the petitioner would amount to defeating the ends of justice.

14. Accordingly, the order dated 26.06.2023 passed by learned 1st Additional Sessions Judge-cum-Special Judge, West Champaran, Bettiah in Special Child Case No.10 of 2023 arising out of Bettiah Muffasil P.S. Case No.757 of 2022 is hereby set aside.

15. The appeal is allowed.

16. Let the appellant, above named, be released on bail on furnishing bail bond of Rs. 10,000/- (ten thousand) with two sureties of the like amount each to the satisfaction of learned 1st Additional Sessions Judge-cum-Special Judge, Juvenile Justice (Care and Protection of Children) Court, West Champaran, Bettiah in Special Child Case No.10 of 2023 arising out of Bettiah Muffasil P.S. Case No.757 of 2022 on the following conditions:-

(i) that one of the bailors shall be the father of the appellant.

(ii) that the father of the appellant shall file an affidavit before the learned Juvenile Justice Board, West Champaran at Bettiah giving specific undertaking that after release of the petitioner on bail, he will take proper care of the appellant and will not allow him to fall into bad company.