

IN THE COURT OF A.D.J.-1st-CUM-SPECIAL JUDGE

(SC/ST & CHILDREN COURT), BUXAR

Child Case No.- 11/2023

(CIS – Cri. Case – 16/2023)

[Arising out of Murar P.S. Case no.- 3/2023]

Child In conflict with Law "R"

(As per mandate of Section 74 of J.J. Act Child In Conflict With Law will be addressed as CICL "R" hereinafter, though his name has been mentioned in the bail petition)

Vs

State of Bihar

Ld. Special P.P. :- Shri Md. Aziz Abbas (Spl. P.P.)

Ld. Counsel for the Defence :- Shri Dr. Kamod Prasad Singh (Advocate)

Present :- SANDIP SINGH,
A.D.J.- 1st-Cum-Special Judge,
(SC/ST & Children Court),
Buxar

Date of Order :- 08.05.2023

ORDER

1. The present bail application has been preferred on behalf of CICL "R" u/s- 12 of the Juvenile Justice (care and protection of children) Act, 2015 in connection with child case no. 11/2023 arising out of Murar P.S. case no. 3/2023 initially registered u/s- 366(A) of the I.P.C. and 4, 8 of POCSO Act.

Child Case No.- 11/2023

(2)

2. The prosecution case in brief is that the informant, Shivmangal Yadav lodged the instant case by way of giving a written application before S.H.O. of Murar police station alleging therein that his minor daughter aged about 13 years went to attend the call of nature on 11.01.2023, but could not returned to the house thereafter the informant made a hectic search, but hid daughter could not be found. Later on, it is transpired that the CIICL "R", who used to talk with the daughter of informant, eloped with her with intention to compel her marriage with him and thereafter the instant F.I.R. has been lodged by the informant against CIICL "R" u/s 366(A) of the I.P.C. and 4, 8 of POCSO Act.

3. The CIICL "R" claimed juvenile and therefore his record was separated and sent before the J.J.B., Buxar for trial. The record of the case was received before J.J.B. Buxar on 08.02.2023 and thereafter the J.J.B., Buxar declared him Juvenile on dated 29.03.2023. Thereafter on the basis of preliminary assessment of the CIICL "R" the record of the case has been sent before this court for trial u/s- 18(3) of the J.J. Act 2015 vide order dated 12.04.2023. Accordingly the record of this case received in this court on 19.04.2023 and it was registered as child case no. 11/2023. Thereafter the instant bail petition has been filed on behalf of the CIICL "R" on dated 28.04.2023.

4. Learned counsel for the CIICL "R" submitted that he is innocent and falsely implicated in this case due to village politics. The CIICL "R" has clean antecedent and there is no any adverse remarks against him in the Social Investigation Report. It is also submitted that seriousness of the offence can not be looked into while considering of the bail application of

contd.... pg. 3

Child Case No.- 11/2023

(3)

Child in conflict with law. The parents of CICL "R" is ready to give undertaking to protect his son from bad company and produce his son before this court on each and every date.

On the other hand learned special P.P. for the state submitted that there is allegation against the CICL "R" for eloping with the minor girl of the informant for compelling her marriage and the victim has supported allegation against the CICL "R" in her statement recorded u/s 164 of Cr.P.C.. Moreover, it is stated in the social investigation report that the CICL "R" is not interested in study. Therefore, there is reasonable chances for believing that the release of CICL "R" is likely to bring him into association with known criminals or expose him to moral, physical or psychological danger and same will defeat the end of justice.

5. Now, for consideration of the bail petition of CICL "R" it is apposite to reproduce the extract of Section 3 and 12 of J.J. Act, 2015:-

“Section 3(i), (iv), (vi) (xii), (xiii). General Principles to be followed in administration of Act:-

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

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(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.

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(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.

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contd.... pg. 4

Child Case No.- 11/2023

(4)

(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.

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(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.

Whereas -

“Section 12(1) of the Juvenile Justice (Care and Protection of Children) Act, 2015, (hereinafter referred as J.J. Act) also states that, 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 end of justice, and the board shall record the reasons for denying the bail and circumstances that led to such decision.

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contd.... pg. 5

Child Case No.- 11/2023

(5)

6. Hon'ble Patna High Court also in the case of Lulu Kumar @ Lalbabu @ Lallu Vs State of Bihar, reported in 2019(4)833, (para-84) while explaining Section 12 of J.J. Act, 2015 laid down the following principle as stated in para 84 of the Judgment -

Para 84 “While interpreting Section 12, the Board is duty bound to be guided by the fundamental principles enumerated in Section 3 of the Act of 2015, specially the principles of 'best interest', 'repatriation' and 'restoration' of child. The fundamental principles in Section 3(xii) provides that a child shall be placed in institutional care as a step of last resort after making a reasonable inquiry. The gravity and nature of the offence are immaterial for consideration of bail under the Act of 2015. 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 Cr.P.C. All persons alleged to be in conflict with law and apparently a child when apprehended must be released except in the following three circumstances.

When there is reasonable ground for believing that :-

- (i) The release is likely to bring that person into association with any known criminal;
- (ii) The release is likely to expose the said person to moral, physical or psychological danger; and
- (iii) The release would defeat the ends of justice.”

7. Considering the aforesaid fact and circumstances of the aforesaid case and in view of the nature of crime there is likelihood of harm to CICAL “R” by the informant and his family members. Moreover, the victim (minor girl) has supported the allegation against the CICAL “R”

contd.... pg. 6

Child Case No.- 11/2023

(6)

in her statement recorded u/s 164 of Cr.P.C., which is mentioned in para no. 74 of the case diary. Moreover, in the Social Investigation Report it is stated that the CIICL "R" is not interested in education as well as he is lacking the moral education also. Hence, in the aforesaid circumstances there is every chance for the CIICL "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 end of justice. Hence the prayer of bail of CIICL "R" is hereby rejected.

8. It is made clear that nothing in this order shall be considered to be expression of opinion on the merits of the case.

Dictated and corrected by me -

Sd/-

(SANDIP SINGH)

Addl. District & Sessions Judge- 1st

-Cum-Special Judge

(SC/ST & Children Court), Buxar

Date : 08.05.2023