

IN THE COURT OF A.D.J.-1st-CUM-SPECIAL JUDGE
(SC/ST & CHILDREN COURT), BUXAR

Child Case No.- 20/2022

(CIS – Cri. Case – 28/2022)

[Arising out of Buxar (Mahila) P.S. Case no.- 50/2022]

Child In conflict with Law "S"

(As per mandate of Section 74 of J.J. Act Child In Conflict With Law
will be addressed as CICL "S" 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 Uma Shankar Singh (Advocate)

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

Date of Order :- 17.02.2023

ORDER

1. The present bail application has been preferred u/s- 12 of the Juvenile Justice (care and protection of children) Act, 2015 in connection with child case no. 20/2022 arising out of Buxar (Mahila) P.S. case no. 50/2022 registered u/s- 376 (D) of I.P.C. and 6 POCSO Act 2012.

2. The prosecution case in brief is that the informant, Bablu Singh lodged the instant case by way of submitting a typed application before S.H.O. of Buxar (Mahila) Police station alleging therein that his

contd..... pg. 2

(2)

Child Case No.- 20/2022

daughter aged about 14 years left the house after quarrel with her mother and during search when the informant and his mother in law reached at Dumraon Railway Station, then his daughter was found weeping at the station and when the informant inquired about the reason of her weeping then she disclosed that she left the house after quarrel and contacted to her friend Shivam Singh, who happened to be her lover, and on his instance she went to the house of CICL "S" where she was raped by CICL "S" and his friend on turn wise and thereafter she returned from there and came to the Dumraon Railway station where another co-accused of this case namely Salu Kuraisi took her along with him and when she was being shifted by him at another place by train for illegal purpose then in the mean time the informant and his mother in law reached at the Dumraon Railway Station and after seeing them the co-accused Salu Kuraisi fled away from there. Accordingly the instant F.I.R. has been registered on the aforesaid allegation u/s- 376 (D) of I.P.C. and 6 POCSO Act 2012.

3. The CICL "S" 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 27.09.2022 and after that the J.J.B., Buxar declared him Juvenile on dated 12.10.2022. Thereafter on the basis of preliminary assessment of the CICL "S" the record has been sent before this court for trial u/s- 18(3) of the J.J. Act 2015. Accordingly the record of this case received in this court on 18.11.2022 and it was registered as child case 20/2022. Thereafter the instant bail petition has been filed on behalf of the CICL "S" on dated 03.02.2023.

4. Learned counsel for the CICL "S" submitted that The CICL "S" is innocent and has been falsely implicated under conspiracy in this case due to village politics. The victim of this case is on the verge of

contd..... pg. 3

(3)

Child Case No.- 20/2022

majority and therefore offence is not made out u/s- 376 (D) of I.P.C. and 6 POCSO Act 2012. There is contradiction between the allegation alleged in the F.I.R. and statement of the victim recorded u/s 164 of Cr.P.C. The medical record of the victim also does not corroborate the allegation alleged against the CICL "S" as it is stated in the medical report that no sign of sexual act in recent was present and the medical examination was conducted on dated 20.08.2022 and the date of occurrence was 16.08.2022. It is also submitted that earlier no any bail petition was filed on behalf of CICL "S" either before this court or any other court. There is no any adverse remarks in the S.I.R. regarding CICL "S" and it is well settled principle that seriousness of the offence can not be looked into while considering of the bail application of Child in conflict with law. The parents are ready to give undertaking to protect their son from bad company and produce their 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 "S" for committing heinous crime against the daughter of informant. Moreover the victim of this case also supported the allegation against the CICL "S" in her statement recorded under 164 of Cr.P.C., which is mentioned in para no. 50 of the case diary. The victim is minor according to medical report and her aged has been assessed between 17 to 18 years. Therefore, there is reasonable grounds for believing that the release of CICL "S" 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 "S" 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:-

contd..... pg. 4

(4)

Child Case No.- 20/2022

(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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(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,

contd..... pg. 5

(5)

Child Case No.- 20/2022

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.

x x x

6. Hon'ble Patna High Court also in the case of *Lalu 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.

contd..... pg. 6

(6)

Child Case No.- 20/2022

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. Hence, having heard the rival submission of Ld. Special P.P. and Ld. counsel for CICAL "S" and from perusal of case record, including the Social Investigation Report it is found that the family of CICAL "S" and the victim are co-villager and considering the nature of allegation it is not safe for the CICAL "S" to leave in the same village. Moreover the CICAL "S" has one criminal antecedent, that is Koransarai P.S. case no.- 65/2019, registered u/s- 392 of the I.P.C.. Therefore, in the aforesaid circumstances there is every chance for the CICAL "S" 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 CICAL "S" 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 : 17.02.2023