

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.233 of 2021

Arising Out of PS. Case No.-195 Year-2018 Thana- KONCH District- Gaya

Nitish Kumar, S/o Ramswarup Paswan, R/o Village-Kamaldah, P.S.-Paraiya, District-Gaya, Under The Guardianship of his Mother Namely Sugi Devi, W/o Ramswarup Paswan, R/o Village-Kamaldah, P.S.-Paraiya, District-Gaya.

... .. Petitioner

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Petitioner	:	Mr. Manish Kumar No.2, Advocate Mr. Ram Kumar, Advocate Mr. Rohit Priyadarshi, Advocate
For the State	:	Ms. Sangeeta Sharma, APP

CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
CAV JUDGMENT

Date : 16-04-2025

The present Revision Petition has been preferred by the petitioner against the judgment dated 16.12.2020 passed by learned Special Judge (Children Court), Gaya in Criminal Appeal (Juvenile) No. 32 of 2019 (C.I.S) whereby learned Appellate Court has refused to enlarge the petitioner on bail.

2. The factual background of the case is that on the fardbeyan of one Gopal Sao dated 14.06.2018, Konch P.S. Case No. 195/2018 was registered on 14.06.2018 for the offences punishable under Sections 395, 376D, 397, 376(3) and 376(DA) of the Indian Penal Code and Section 6 of the POCSO Act, 2012 against ten unknown persons.

3. After investigation, charge-sheet bearing no. 192



of 2018 dated 06.09.2018 was filed under Section 395, 376D, 397, 376(3) and 376(DA) of the Indian Penal Code and Section 6 of the POCSO Act, 2012 against twelve accused persons including the appellant in the POCSO Court. On an application of the appellant herein, the POCSO Court sent the record of the Appellant vide order dated 15.12.2018 to the J.J. Board, Gaya for declaring him juvenile along with the xerox copy of the School Leaving Certificate filed by the Appellant.

4. Subsequently, learned J.J. Board, Gaya declared the appellant as juvenile on the basis of admission register wherein his date of birth was mentioned as 17.08.2001, whereas the date of the alleged occurrence is 13.06.2018 and hence, finding the appellant 16 years 9 months and 26 days old, the appellant was declared juvenile and subsequently, vide order dated 28.01.2020, cognizance of offence punishable under Sections 395, 376D, 397, 376(3) and 376(DA) of the Indian Penal Code and Section 6 of the POCSO Act, 2012 was taken against the appellant and the matter was fixed for preliminary assessment of the appellant in view of his age and the nature of the alleged offence. Vide order dated 22.02.2020, preliminary assessment of the appellant was made, as per which the appellant was found to be capable to commit the alleged



offence and able to understand the consequences and nature of the offence allegedly committed by him. Hence, the matter was transferred to the Children Court, Gaya for his trial as adult. Subsequently charge was framed and trial is going on, which is at the stage of prosecution evidence.

5. In regard to the bail application, it transpires that by the order dated 28.03.2019, learned J.J. Board has rejected the application of the appellant for releasing him on bail holding as follows:

“ A perusal of the record shows that this case has been instituted U/S 395, 376 (d) 376 (3), 376 (DA), 397 IPC & 6 POSCO Act. 2012 against unknown person & after completion of enquiry the IO has found the indulgence of 12 accused including CICL Nitish Kumar submitted Charge-Sheet against CICL u/s 395, 397, 376(d), 376(3), 376(DA), 412, 120(b) IPC & 4/6 POCSO Act. The informant & victim girl in her statement u/s 164 Cr.PC, has supported not only the allegation aforesaid section but also the allegation of group rape against the unknown accused persons. Witness Rambilash Paswan, Sita Devi & Vicky Paswan accept the name of CICL Nitish Kumar & other accused persons in the Case-diary.

A perusal of the SIR shows that there is lack of proper control by the Guardian over the CICL due to which the CICL is in the company of wrong people & is in habit of taking his own decision without proper guidance. It has also been found that the CICL actively extended support to his friend. If the CICL is released on bail he would be exposed to Physical & Psychological danger due to such hatred.

After considering the material collected after inquiry, the SIR this Board is of the opinion that the if CICL Nitish Kumar be released on bail there are chances of exposing him to physical mental & Psychological danger hence his bail petition is hereby Rejected”



6. Against the rejection order, the appellant preferred Criminal Appeal (Juvenile) No. 32 of 2019 in the Court of Special Judge (Children Court), Gaya, but even the Children Court by the impugned order dated 16.12.2020 refused to enlarge the appellant on bail, holding as follows:

“7. From perusal of the case record and case diary, it appears that the gist of allegation against the appellant is that he intercepted the informant along with the co-accused on the way when he was going to his village along with his wife and daughter on motorcycle and threatened the informant of dire consequences and committed rape upon his daughter and wife and also robbed two thousand rupees and ornaments of his wife of the Informant.

It is settle principle of law that in granting bail to the juvenile the prime consideration is the reasonable estimation of threat perception, especially physical and psychological, to which the juvenile may be exposed when released on bail and in this regard the antecedent, activities, behaviour and company of the juvenile is to be considered primarily. In the instant case, the para 117 of the case dairy reveals that during course of investigation, police recovered are country made pistol from home of the appellant with two live cartridges. All the other accused persons of the case are well known to the appellant and material available on the record clearly indicates that appellant/C.I.C.L. has been actively participating in their illegal activities. The brutality and professionalism shown by the accused person including this appellant in committing the occurrence, clearly indicates that they are habitual offender and the appellant/C.I.C.L. have bad company of such offender. Co-accused Hirday Paswan, Nawlesh Paswan, Prakash Paswan and other co-accused persons specifically stated about the involvement of the appellant in the occurrence. Other co-accused of the case have criminal antecedent and they are involved in so many occurrences of serious nature. From the perusal of the social investigation report, it appears that father of the appellant has criminal antecedent and he had also gone to jail. Appellant has left his education. He belongs to uneducated family. He is a man of negative thinking and have bad company. He takes decision at his own and have



no proper guardianship Thus, in view of the above discussed facts circumstances, it appears that the appellant has bad company of habitual criminals and in order to insure a healthy future of the appellant, I do not find it proper to enlarge him on bail at this stage of trial and allowing this appeal would defeat the ends of justice and the purpose of reform in the appellant would not take place and his release would also be against the interest of the C.I.C.L./appellant and there is also chance of moral, physical and psychological danger to the C.I.C.L./appellant. So, I do not find any illegality in the order dated 28.03.2019 of the J.J.B., Gaya passed in Konch P.S. Case No. 195/2018.”

7. Being aggrieved by the Appellate order, the appellant has preferred the present revision petition.

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

9. Learned counsel for the petitioner submits that the impugned judgment is not sustainable in the eye of law. Learned Appellate Court below has erroneously dismissed the appeal on irrelevant consideration. He further submits that the impugned judgment is also based on surmises and conjecture.

10. However, learned A.P.P. for the State defends the impugned judgment submitting that there is no illegality or infirmity in the same and the present petition is, accordingly, liable to be dismissed.

11. Before I consider the rival submissions of the parties, I deem it proper to refer to Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015, which deals



with bail to juveniles. 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 sub-section (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)

12. 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 three 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.

13. 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 the child who is 16 years or above 16 years of age 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**).

14. Here, it would be also pertinent to point out that the ends of justice as used in the proviso to Section 12(1) of the J.J. Act is drastically different to one as used in the context of



penal statutes. The ends of justice in the context of any Act is ascertained on the basis of the purpose and object of that Act and the objective of the J.J. Act is to reform and rehabilitate the juveniles and not to punish them, as emerges from the preamble to the J.J. Act, which 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, hereinunder and for matters connected therewith or incidental thereto.”
(Emphasis Supplied)

15. The purpose and object of the J.J. Act manifests in Section 3 also of the J.J. Act, providing for general principles to be followed in the administration of the Act. Section 3 of the Act reads 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.

.....
(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.

(vii) Positive measures: All resources are to be mobilised



including those of family and community, for promoting the well-being, facilitating development of identity and providing an inclusive and enabling environment, to reduce vulnerabilities of children and the need for intervention under this Act.

(viii) Principle of non-stigmatising semantics: Adversarial or accusatory words are not to be used in the processes pertaining to a child.”

(Emphasis supplied)

16. The J.J. 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 law would be self-destructive for the society.

17. As such, if the 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)**).

18. It also emerges from Section 3 of the Act that Reformatory or Observation Home is only one of the measures contemplated by our legislature for reforming and rehabilitating the delinquent children. However, the family of the child in conflict with law 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 v, xii and xiii of Section 3 of the Act which read 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:—

.....
(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.

.....
(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 reunited 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)

19. As such, Section 12 of the J.J. Act is in consonance with the purpose and object of the Act, providing 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.

20. Hence, under the J.J. Act, 2015, a child in conflict with law is not expected to be treated as an adult offender. J.J. Boards/Courts are required to adopt fundamentally a different approach while dealing with juveniles in conflict with law. They are expected to deal with such juveniles with all sensibility and responsibility, keeping in mind the purpose and object of the J.J. Act to reform and rehabilitate the child, so as to make him a responsible and productive member of the society. The society would get ruined if such children are dealt with punitive approach.

21. Coming to the case on hand, I find that learned J.J. Board has dismissed the application of the appellant for bail on the ground that his guardian has no control over him and is in habit of taking his own decision without proper guidance and he is in the company of wrong people. It has been also observed by learned J.J. Board that if the appellant is released on bail, he would be exposed to physical and psychological danger due to hatred prevailing in the society.



22. I further find that learned Children Court has also refused to enlarge the appellant on bail, observing that during investigation, one country made pistol and two live cartridges were recovered from his house and he has been actively participating in illegal activities. He has also taken into consideration the “brutality and professionalism shown by the accused persons and the appellant in committing the offence.” It has been also observed that the accused persons including the appellant is a habitual offender and they are also in the bad company of offenders. The father of the appellant has criminal antecedents and he is in jail. The appellant belongs to an uneducated family and he has also stopped pursuing studies.

23. However, I find that the observation made by learned J.J. Board as well as learned Children Court are not in consonance with the Social Investigation Report and the statement of the mother of the appellant as made during inquiry proceeding for determination of the age of the appellant. In her statement, the mother of the appellant, Sugi Devi, has stated that she has three children and the appellant is the eldest one and he dropped out from school after passing out from Class-V and started helping her in cultivation.

24. From the perusal of the Social Investigation



Report, it also transpires that the appellant belongs to a poor and uneducated family belonging to a Scheduled Caste community and on account of poverty of his family, he was constrained to drop out from the school after passing out class-V so as to help his family in cultivation for sustenance. He is unmarried and the eldest son of his parents. He has no criminal antecedents. The observation of the Court below that he was involved in illegal activities is based on conjecture and surmises without any basis.

25. The observation of the Court below that the Appellant is in bad company is also unfounded. No specific information has been provided in the Social Investigation Report in support of such observation. From the statement of the mother of the appellant, it transpires that his family is very poor, struggling for its sustenance and the Appellant was helping his mother to maintain the family.

26. I further find that the appellant was not named in the FIR and the FIR was lodged against unknown persons and no specific allegation is made against the appellant. The whole case is based on suspicion without any cogent evidence to show the involvement of the appellant in the alleged offence.

27. There is also nothing on record to show that if the Appellant is released on bail, he will be exposed to moral,



physical and psychological danger. There is also no material on record to suggest that he was a member of criminal gang and his release would bring him in association with such criminals.

28. On the contrary, I find that the Appellant was acting as a responsible member of his family. He, despite being a minor, was helping his mother to maintain the family. He has dropped out from school only on account of financial difficulty of the family and to help his mother in cultivation so that her mother could maintain the family.

29. Though it has come on record that the father of the appellant has criminal antecedent and he is in jail, there is no such criminal antecedents of his mother, who is a housewife and doing cultivation for sustaining her family and the appellant was helping her in her effort to maintain the family.

30. As such, I find that no ground is made out to deny bail to the Appellant. In fact, I find that release of the Appellant on bail would be in the best interest of the child if he is provided with education and District Administration helps his family as per the State Welfare Schemes to tide over his financial hardship.

31. Hence, the impugned judgment dated 16.12.2020 passed by learned Special Judge (Children Court), Gaya and the



Order dated.28.03.2019 passed by learned J.J. Board are not sustainable in the eye of law.

32. The appeal is, accordingly, allowed, directing release of the Appellant on bail, subject to furnishing a bail bond of Rs. 10,000/- by his mother and undertaking by her by way of an affidavit that the appellant would not come into contact with any criminal and he would restart his education through open school or otherwise and his developmental needs would be taken care of, and he would attend the J.J. Board and courts as and when required or directed.

33. The District Magistrate, Gaya is also directed to ensure that the family of the Appellant has ration card and Aadhar card and it gets supply of food grains at subsidized rate from the Public Distribution System as per the government schemes. The District Magistrate is also directed to ensure that if the family of the Appellant fulfills the conditions for getting financial assistance for construction of house or loan for animal husbandry, it gets such financial assistance and loan.

34. Secretary, Gaya District Legal Services Authority is also directed to provide needful assistance to the Appellant in getting Ration Card, Aadhar card and financial assistance for house and animal husbandry, in collaboration with the District



Magistrate. Secretary, DLSA, Gaya is also directed to provide assistance to the Appellant in getting admission in open school or other educational institutions, so that the Appellant could restart his education. A copy of this judgment/order be sent to the Court below, the District Magistrate, Gaya and Secretary DLSA, Gaya for their information and needful.

35. A copy of this judgment/order be also circulated amongst the Presiding Officers of the J.J. Boards and Children Courts of the State of Bihar. A copy of this judgment/order be also sent to the Bihar Judicial Academy for discussion in the training programmes for the Presiding Officers of the J.J. Boards and Children Courts.

36. Lower Court Records be sent back to the Courts concerned.

(Jitendra Kumar, J.)

Chandan/
Ravishankar

AFR/NAFR	A.F.R
CAV DATE	07.04.2025
Uploading Date	16.04.2025
Transmission Date	16.04.2025

