

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.28 of 2022

Arising Out of PS. Case No.-41 Year-2021 Thana- GHORASAHAN District- East
Champaran

RAJAN KUMAR @ RANJAN KUMAR YADAV S/o Raju Rai R/o Vill
Yadav Tola Kadamwa, P.S. - Ghorasahan, Dist. East Champaran.

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Dhannjay Kumar No 2
For the Respondent/s : Mr. Akshay Lal Pandit, APP.

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

4 21-08-2023 Heard the parties.

2. The present Cr. Revision application has been filed against the judgment and order dated 14.09.2021 passed in Cr. Appeal No. 22/2021 by the learned 1st Additional Sessions Judge, East Champaran, Motihari along with order dated 22.03.2021 passed by Juvenile Justice Board, Motihari in connection with Ghorasahan PS Case No. 41/2021 for the offence punishable under Sections 147/148/149/302/120(B) of the IPC whereunder both the learned courts below have refused to release the revisionist/petitioner on bail.

3. As per FIR lodged on 29.01.2021, while the informant along with his family members were basking fire, at their door, then twelve FIR named persons along with 25-30 unknown persons arrived there and Lalbabu Rai, Rajeshwar Rai



and Kameshwar Rai caught his son, namely, Amit Lal Yadav and Rajeshwar Rai shot him dead. Then nephew of the informant, namely Gama Rai was caught and murdered by Kameshwar Rai, Lalbabu Rai, Suraj Kumar and others.

4. Learned counsel for the petitioner submits that the petitioner/revisionist has not committed any offence in the manner alleged and he has been implicated in this case on the basis of mere suspicion. No specific allegation has been attributed to the petitioner. The petitioner has been declared as juvenile on 22.03.2021 by the JJB, Motihari, East Champaran. The findings arrived at by the learned appellate courts for rejection of the bail application are based upon no material, who by impugned judgment arrived at an erroneous conclusion that if the CICL is released from the protective custody, he will come into social and psychological danger which will defeat the ends of justice. It has next been submitted that the learned court below has passed the impugned order mechanically and without application of judicial mind.

5. Learned counsel has placed reliance upon Sections 3 (i) (iv) (v) and (xiv) of Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as 'the Act') which are 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, 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 in 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 an 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 the petitioner, if released on bail he will come into social and psychological danger.

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 petitioner and denial is an exception, this Court may consider to pass an appropriate order in accordance with the provisions of the Act.

10. From perusal of the records, it appears that petitioner is in custody since 30.01.2021 having clean antecedents.

11. A Bench of this Court in the judgment reported in **2019 (4) PLJR 833** in the case of **Lalu Kumar @ Lalbabu @**



Lallu v. State of Bihar 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 CrPC.

12. Having regard to the submissions made by the parties and taking into consideration the material on record and the fact that the petitioner is in protective custody since 30.01.2021, there is not specific allegation against him, and there was no material before the learned appellate court to come to the conclusion that if the CICL is released from the protective custody, he will come into social and psychological danger which will defeat the ends of justice, this Court is of the considered view that the impugned judgment and order passed by both the courts below are not sustainable in the eyes of law inasmuch as they are not consistent with the aims and objects of the Act.

13. Accordingly, judgment and order dated 14.09.2021 passed in Cr. Appeal No. 22/2021 by the learned 1st



Additional Sessions Judge, East Champaran, Motihari along with order dated 22.03.2021 passed by Juvenile Justice Board, Motihari, East Champaran in connection with Ghorasahan PS Case No. 41/2021 for the offence punishable under Sections 147/148/149/302/120(B) of the IPC, are hereby, set aside and the revisionist/petitioner, ***Rajan Kumar @ Ranjan Kumar*** is directed to 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 Principal Magistrate, Juvenile Justice Board, Motihari, East Champaran in connection with aforementioned case, subject to the condition that one of the bailors shall be the father of the juvenile/petitioner.

14. With the aforesaid observations and directions, the instant application stands allowed.

(Anil Kumar Sinha, J)

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