

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL REVISION No.73 of 2023**

Arising Out of PS. Case No.-257 Year-2021 Thana- JAYNAGAR District- Madhubani

OM KUMAR YADAV Son of Sri Upendra Yadav R/v- Korahiya Dih Tole,  
P.S.- Jainagar, District- Madhubani through his natural guardian mother  
namely Punita Devi, aged about 42 years (Female), Wife of Sri Upendra  
Yadav, R/v- Korahiya Dih Tole, P.S.- Jainagar, District- Madhubani

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

**Appearance :**

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|----------------------|---|-----------------------------------------------------------|
| For the Petitioner/s | : | Mr. Ajay Kumar Thakur,<br>Ms. Vaishnavi Singh, Advocates. |
| For the Respondent/s | : | Mr. Nagendra Prasad, APP                                  |

**CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA**  
**ORAL ORDER**

2      31-07-2023                      Heard Mr. Ajay Kumar Thakur, learned counsel for  
revisionist/petitioner and Mr. Nagendra Prasad, learned APP for  
the State.

2. The present Cr. Revision application has been filed  
against the judgment and order dated 03.12.2022 passed in Cr.  
Appeal No. 47/2022 by the learned 1<sup>st</sup> Additional Sessions  
Judge, Madhubani along with order dated 05.08.2022 passed by  
learned Juvenile Justice Board, Madhubani in connection with  
Enquiry No. 831/2022 arising out of Jainagar PS Case No.  
257/2021 for the offence punishable under Sections 302/34 of  
the IPC whereby and whereunder both the learned courts below  
have refused to release the revisionist/petitioner on bail.



3. The allegation, as per prosecution story, lodged by the informant on 14.09.2021 is that when her son, namely, Akash Kumar was on his way to see *Mela of Ganesh Chaturdashi*, he was, allegedly, surrounded by the petitioner along with six other accused persons and the petitioner stabbed her son causing injury in his stomach which ultimately proved fatal and her son succumbed to his injury.

4. Learned counsel for the petitioner submits that the petitioner/revisionist has not committed any offence in the manner alleged inasmuch the FIR itself shows that the informant and others had reached to the place of occurrence after hearing hue and cry and they themselves had not seen the occurrence. The findings arrived at by the learned appellate court for rejection of the bail application are based upon no material who by impugned judgment arrived at an erroneous conclusion that the release of the petitioner will defeat the end of justice. Learned counsel next submits that it would be evident from the impugned order that there is no any adverse report against the juvenile/petitioner in the social investigation report. It has next been submitted that the learned court below has passed the impugned order mechanically and without application of judicial mind. He next submits that the petitioner



is in judicial custody since 16.09.2021 and he was declared juvenile on 20.05.2022 by the court of J.J. Board, Madhubani. Lastly, it is submitted that the seriousness and gravity of the case should not be one of the grounds for refusal of the bail.

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.

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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.

**(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.

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**(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. Learned counsel further relies upon Section 12 of the Act which is 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 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 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 maybe, 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 fulfill 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.

8. 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.

9. Learned counsel for the petitioner, 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 would defeat the ends of justice as the petitioner has committed a heinous crime.

10. 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.

11. From perusal of the records, it appears that petitioner is in custody since 16.09.2021.



12. Having regard to the submissions made by the parties and taking into consideration the material on record and the fact that there was no material before the learned appellate court to come to the conclusion that release of the petitioner on bail will defeat the ends of justice and taking into consideration the materials on record and the period of incarceration of the petitioner, 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, the judgment and order dated 03.12.2022 passed in Cr. Appeal No. 47/2022 by the learned 1<sup>st</sup> Additional Sessions Judge, Madhubani along with order dated 05.08.2022 passed by learned Juvenile Justice Board, Madhubani in connection with Enquiry No. 831/2022 arising out of Jainagar PS Case No. 257/2021 24/2021 for the offence punishable under Sections 302/34 of the IPC are hereby, set aside and the revisionist/petitioner, Om Kumar Yadav, 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 Juvenile Justice Board, Madhubani in connection with Enquiry No. 831/2022 arising



out of Jainagar PS Case No. 257/2021 24/2021 subject to the condition that one of the bailors will be the mother of the petitioner.

14. With the aforesaid observation and direction, the instant application is allowed.

**(Anil Kumar Sinha, J)**

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