

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.187 of 2023

Arising Out of PS. Case No.-269 Year-2022 Thana- SANGRAMPUR District- Munger

AMIT KUMAR SON OF DHARAMVIR TANTI @ DHARAMVIR R/O VILLAGE- GHORPITHIYA, P.S.- SHAHKUND, DISTRICT- BHAGALPUR UNDER THE GUARDIANSHIP OF HIS FATHER DHARAMVIR @ DHARAMVIR TANTI, AGED ABOUT 43 YEARS (MALE), S/O BALDEV TANTI R/O VILLAGE- GHORPITHIYA, P.S.- SHAHKUND, DISTRICT- BHAGALPUR

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Arvind Kumar Sinha
For the Respondent/s : Ms. Rita Verma

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

3 17-08-2023 Heard Mr. Arvind Kumar Sinha, learned counsel for revisionist/petitioner and Ms. Rita Verma, learned APP for the State.

2. The present Cr. Revision application has been filed against the judgment and order dated 30.01.2023 passed in Cr. Appeal No. 01/2023 by the learned Additional District & Sessions Judge 1st, Munger along with order dated 24.12.2022 passed by Juvenile Justice Board, Munger in connection with Sangrampur PS Case No. 269/2022(JJB Case No. 233/2022) for the offence punishable under Sections 366A IPC read with Section 08 of the POCSO Act, whereby and whereunder both the learned courts below have refused to release the



revisionist/petitioner on bail.

3. As per narration of the FIR lodged on 29.10.2022 by the informant her minor daughter has allegedly been abducted by the petitioner from her house in her presence. She tried to prevent him but petitioner forcibly took her daughter away.

4. Learned counsel for the petitioner submits that the petitioner/revisionist has not committed any offence in the manner alleged inasmuch as the victim and the petitioner were in love. It has next been submitted that the FIR itself discloses the fact that before the very eye of the informant the petitioner came alone to her home and took her daughter forcibly seems to be *prima facie* improbable. It has further been submitted that the statement of the victim girl recorded under Section 164 CrPC is far from truth as it has been given under the pressure and influence of her parents. 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 the release of the petitioner would not only expose him to moral, physical and psychological danger but would also lead to 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. He next submits that the petitioner is in judicial custody since 30.10.2022.

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 would defeat the ends of justice .

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 30.10.2022.

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 period of incarceration of the petitioner and there was no material before the learned appellate court to come to the conclusion that the release of the petitioner would not only expose him to moral, physical and psychological danger but would also lead to 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 30.01.2023 passed in Cr. Appeal No. 01/2023 by the learned Additional District & Sessions Judge 1st, Munger along with order dated 24.12.2022 passed by Juvenile Justice Board,



Munger in connection with Sangrampur PS Case No. 269/2022(JJB Case No. 233/2022) for the offence punishable under Sections 366A IPC read with Section 08 of the POCSO Act, are hereby, set aside and the revisionist/petitioner, ***Amit 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 Juvenile Justice Board, Siwan in connection with aforementioned case, 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 stands allowed.

(Anil Kumar Sinha, J)

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