

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.305 of 2023

Arising Out of PS. Case No.-1 Year-2020 Thana- ASANWA District- Siwan

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KRISHNA SINGH @ ASHU SINGH Son of Jitendra Singh Resident of
village - Chitanpur, P.S - Asawn, Distt. - Siwan, through his brother/legal
Guardian namely Vivek Kumar Singh Petitioner/s

Versus

The State of Bihar Respondent/s

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Appearance :

For the Petitioner/s : Mr. Kumari Anupam

For the Respondent/s : Mr. Sanjay Kumar

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

2 07-08-2023 Heard the parties.

2. The present Cr. Revision application has been filed against the judgment and order dated 07.02.2023 passed in Juvenile Trial No. 20/2022 by the learned 1st Additional Sessions Judge-cum-P.O., Children Court, Siwan in connection with Asawn PS Case No. 01/2020 for the offence punishable under Sections 147/149/353/427/413/414/272/273/308 of the IPC and Section 30 (a)/38/41 of the Bihar Prohibition & Excise Act, 2016 whereby and whereunder the learned court below has refused to release the revisionist/petitioner on bail.

3. The Police party on the basis of secret information arrived at the house of one Jitendra Singh and upon seeing the police party other accused persons present over there started fleeing away by a Safari vehicle. However, on chase, the police party seized the Safari Vehicle bearing Registration No. BR-1PA-1044 wherefrom 12 bottles of 375 ML, 24 bottles of whiskey have been recovered. The said Jitendra Singh was



apprehended while others succeeded in fleeing away. When Jitendra Singh was asked for the documents of the Safari Vehicle, he did not produce any documents. It is further alleged that during course of this incident, the vehicle of the police party was also vandalized by the persons present over there.

4. Learned counsel for the petitioner submits that the petitioner/revisionist has not committed any offence in the manner alleged inasmuch as he is not the owner of the said Safari vehicle nor any illicit liquor has been recovered from his conscious possession. He next submits that the petitioner has been implicated in this case merely on the basis of his presence on the place of occurrence. He further submits that 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 if the order of release of the petitioner is passed, it may defeat the ends of justice and lead to an unwanted moral, physical and psychological danger to the CICL. 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 16.03.2021.



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 as the petitioner has committed a heinous crime.

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 16.03.2021.

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 there was no material before the learned appellate court to come to the conclusion that if the order of release of the petitioner is passed, it may defeat the ends of justice and lead to an unwanted moral, physical and psychological danger to the CICL and taking into consideration that he is not the owner of the said Safari vehicle nor any illicit liquor has been recovered from his conscious possession and the period of incarceration of the petitioner, this Court is of the considered view that the



impugned judgment and order passed by the court below is not sustainable in the eyes of law inasmuch as the same is not consistent with the aims and objects of the Act.

13. Accordingly, the judgment and order dated 07.02.2023 passed in Juvenile Trial No. 20/2022 by the learned 1st Additional Sessions Judge-cum-P.O., Children Court, Siwan in connection with Asawn PS Case No. 01/2020 for the offence punishable under Sections 147/ 149/ 353/ 427/ 413/ 414/ 272/ 273/ 308 of the IPC and Section 30 (a)/38/41 of the Bihar Prohibition & Excise Act, 2016 is hereby, set aside and the revisionist/petitioner, **Krishna Singh @ Ashu Singh** 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 1st Additional Sessions Judge-cum-P.O., Children Court, Siwan in connection with Asawn PS Case No. 01/2020, 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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