

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.308 of 2023

Arising Out of PS. Case No.-26 Year-2022 Thana- PANCHRUKHI District- Siwan

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ABDUL KARIM @ KARIM @ KARIMAN @ CHIKKU Through his mother and natural guardian namely Rajaitun Khatoon Rajaitun Khatoon aged about 43 years wife of Dildar Miya, Resident of village - Shambhopur Mahuari, P.S. - G.B. Nagar, Distt. - Siwan

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Amir Alam, Adv.

For the Respondent/s : Dr. Mrityunjaya Kr.Gautam, APP

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

3 07-08-2023 Heard Mr. Amir Alam, learned counsel for revisionist/petitioner and Mr. Mrityunjaya Kr.Gautam, learned APP for the State.

2. The present Cr. Revision application has been filed against the judgment and order dated 17.02.2023 passed in Cr. Appeal No. 67/2022 by the learned P.O. Children Court-cum-Additional District & Sessions Judge 1st, Siwan along with order dated 12.10.2022 passed by Juvenile Justice Board, Siwan in connection with JE No.415/22 arising out of Panchrukhi PS Case No. 26/2022 for the offence punishable under Sections 365 IPC and later on Sections 302/201/120B/34 of the IPC were added, whereby and whereunder both the learned courts below have refused to release the revisionist/petitioner on bail.



3. As per FIR lodged on 26.01.2022 by the informant, that his son, namely, Rahul Kumar who was working in a salon gone missing on 24.01.2022 and his mobile is found to be switched off. Even after hectic search, no trace could be found about the missing boy.

4. Learned counsel for the petitioner submits that the petitioner/revisionist has not committed any offence in the manner alleged and most importantly, he is not named in the FIR inasmuch as the same is against unknown. He further submits that the petitioner has been implicated in this case on the basis of mere suspicion. It has next been submitted that two other juvenile/accused have been released on bail by a Bench of this Court in Cr. Revision No. 772/2022 along with its analogous case. 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 of 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



29.01.2022.

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 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 29.01.2022.

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 material on record and the fact that the two juvenile accused in the same case have been released on bail by a Bench of this Court, petitioner is not named in the FIR 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 of 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 17.02.2023 passed in Cr. Appeal No. 67/2022 by the learned P.O. Children Court-cum-Additional District & Sessions Judge 1st, Siwan along with order dated 12.10.2022 passed by Juvenile



Justice Board, Siwan in connection with JE No.415/2022 arising out of Panchrukhi PS Case No. 26/2022 for the offence punishable under Sections 365, 302/201/120B/34 of the IPC, are hereby, set aside and the revisionist/petitioner, Abdul Karim @ Kariman @ Chikku 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 father of the petitioner.

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

(Anil Kumar Sinha, J)

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