

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.321 of 2023

Arising Out of PS. Case No.-224 Year-2022 Thana- BODHGAYA District- Gaya

GAUTAM KUMAR SON OF SANJAY PASWAN VILLAGE -NEW
TARIGHAT BHAGALPUR ,PS BODH GAYA DIST GAYA

... .. Petitioner/s

Versus

1. The State of Bihar
2. LAXMI DEVI WIFE OF KAMALDEO PASWAN VILLAGE- NEW
TARIGHAT BHAGALPUR, PS- BODH GAYA, DISTT- GAYA BIHAR

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Ashok Kumar, Adv.
For the Respondent/s	:	Mr.Ashok Kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

3 31-07-2023 Heard Mr. Ashok Kumar, learned counsel for
revisionist/petitioner and Mr. Ashok Kumar Singh, learned APP
for the State.

2. The present Cr. Revision application has been filed
against the judgment and order dated 06.03.2023 passed in Cr.
Appeal Juvenile No. 8/2022 by the learned Special Judge,
Children Court, Gaya along with order dated 15.10.2022 passed
by learned Juvenile Justice Board, Gaya in connection with
Bodh Gaya PS Case No. 224/2022 for the offence punishable
under Sections 366(4) 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 03.05.2022 is that the petitioner enticed away her minor daughter for the purpose of performing marriage with her.

4. Learned counsel for the petitioner submits that the petitioner/revisionist has not committed any offence in the manner alleged inasmuch both the parties are next-door neighbors. He further submits that the statement recorded under Section 164 CrPC by the victim is under influence of her parents and that too, *prima facie*, seems to be completely ambiguous and fishy. Further, the medical report dated 25.06.2022 (Annexure-2) of the victim girl suggests that she has been carrying pregnancy of 17 weeks and 05 days which is of much prior to the incident of alleged abduction by the petitioner. It is also submitted 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 the manner of commission of offence indicates an evil and well planned design indicating matured skill of the juvenile/petitioner and his release 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. He next submits that the petitioner



is in judicial custody since 27.06.2022. 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.

(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. 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 sub-section (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, 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 27.06.2022.

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 his release will defeat the ends of justice and considering 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 06.03.2023 passed in Cr. Appeal Juvenile No. 8/2022 by the learned Special Judge, Children Court, Gaya along with order dated 15.10.2022 passed by learned Juvenile Justice Board, Gaya in connection with Bodh Gaya PS Case No. 224/2022 for the offence punishable under Sections 366(4) of the IPC are hereby, set aside and the revisionist/petitioner, ***Gautam 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, Gaya in connection with Bodh Gaya PS Case No. 224/2022 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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