

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.350 of 2023

Arising Out of PS. Case No.-435 Year-2022 Thana- NAVINAGAR District- Aurangabad

RAJNISH KUMAR son of Munna Singh @ Munnalal Singh under guardianship of his father Village- Dhobdiha Ps- Nabinagar Navinagar, Dist- Aurangabad

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Nitu Kumari

For the Respondent/s : Mr.Abhay Kumar Roy

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 18.04.2023 passed in Cr. Appeal No. 21/2023 (Arising out of Nabinagar (Navinagar) PS Case No. 435/2022, JJB No. 740/2023) by the learned 1st Additional Sessions Judge-cum-Children Court, Aurangabad, Bihar as well as order dated 18.03.2023 passed by Juvenile Justice Board, Aurangabad for the offence punishable under Sections 364/302/201/120(B)/34 of the IPC whereby and whereunder the learned court below has refused to release the revisionist/petitioner on bail.

3. Narration of the FIR lodged on 10.11.2022 discloses the fact that the nephew of the informant on 08.11.2022 at about 7:00 AM had gone to Aurangabad to attend



coaching class and since then he was missing. When his mobile bearing no. 6299184955 was tried to contact him, the same was found to be switched off. Thereafter, he received a call from mobile no. 9162157778 by which the informant was informed that his nephew would not go to the home today as there was birthday of his friend. Again on 10.11.2022 at 7:12 AM, the said mobile number i.e., 9162157778 was contacted whereupon the owner of the mobile informed that Shekhar Kumar (victim) had gone with Rajnish Kumar. When Rajnish Kumar was contacted by the phone, he informed the informant that the victim boy was with Rahul Kumar holder of Mobile No. 9162157778. At about 12:30 on 10.11.2022, the dead body of the informant's nephew was found on the railway track.

4. Learned counsel for the petitioner submits that the petitioner/revisionist has not committed any offence in the manner alleged inasmuch no one has seen the occurrence. He next submits that the petitioner has been implicated on the basis of mere suspicion. The FIR itself discloses the fact that the holder of mobile no. 9162157778, namely, Rahul Kumar had informed the informant that his nephew would not go home as he had to attend someone's birthday. The FIR further discloses that it is the Rahul Kumar who had taken the name of the



juvenile/petitioner that the victim boy was with the present petitioner in order to implicate him. 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 13.11.2022 and he has been declared juvenile vide order dated 04.01.2023 by the JJB, Aurangabd.

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 the name of the petitioner has been disclosed by another accused person, petitioner is in protective custody since 13.11.2022 and he has been declared juvenile *vide* order dated 04.01.2023 by the JJB, Aurangabd, 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 18.04.2023 passed in Cr. Appeal No. 21/2023 (Arising out of Nabinagar (Navinagar) PS Case No. 435/2022, JJB No. 740/2023) by the learned 1st Additional Sessions Judge-cum-Children Court, Aurangabad, Bihar as well as order dated



18.03.2023 passed by Juvenile Justice Board, Aurangabad for the offence punishable under Sections 364/302/201/120(B)/34 of the IPC is hereby, set aside and the revisionist/petitioner, ***Rajnish 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 1st Additional Sessions Judge-cum-Children Court, Aurangabad in connection with Nabinagar (Navinagar) PS Case No. 435/2022, JJB No. 740/2023), 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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