

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.390 of 2023

Arising Out of PS. Case No.-252 Year-2022 Thana- OBRA District- Aurangabad

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1. PANKAJ KUMAR @ GATTU S/o- SATYENDRA PASWAN Village- Purnadih Ps- Obra Dist- Aurangabad
 2. Ranjan Kumar son of Mohan Paswan Under Guardianship- Dashrath Poowan Village- Purnadih Ps- Obra Dist- Aurangabad

... .. Petitioner/s

Versus

The State of Bihar Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Aman Vishal

For the Respondent/s : Mr.Sanjay Kumar Tiwary

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

3 07-08-2023

1. Heard the parties.

2. This Criminal Revision application has been filed against the judgment and order dated 12-04-2023 passed in Cr. Appeal No. 16 / 2023 by learned Children Court cum 1st Additional District and Sessions Judge, Aurangabad (Bihar) whereby and where under the order dated 16-02-2023 passed by Juvenile Justice Board, Aurangabad in JJB No. 625 / 2023, GR No. 689 / 2022 arising out of Obra PS Case No 252 / 2022 dated 20-6-2022 instituted for the offence punishable under Section 302 / 34 of the IPC has been upheld and appeal for grant of bail to the petitioners have been rejected and further to release the petitioners on bail in connection with Obra PS Case



No. 252 of 2022.

3. As per the prosecution case the brother of the informant namely Ravi Kumar was working at the petrol pump of one Manish Kumar and on 20-06-2022 his brother was killed by the said Manish Kumar with the help of the F.I.R. named accused persons Sunil Singh and Vidyapati.

4. Learned counsel for the petitioners submits that the petitioners were declared juvenile by the learned Juvenile Justice Board, Aurangabad (Bihar) after coming to the conclusion that the petitioners were minor at the time of alleged occurrence and petitioner no. 1 was aged about 15 years 3 months 16 days and the petitioner no. 2 was aged about 15 years 4 months 15 days. Learned counsel further submits that against the order passed by Juvenile Justice Board, Aurangabad refusing the bail application, the petitioners preferred appeal being Cr. Appeal No. 16 of 2023 before the learned Children Court cum 1st Addl. District and Sessions Judge, Aurangabad (Bihar) who by the impugned judgment and order arrived at erroneous conclusion that though the name of the appellants was not in the F.I.R. but the name of the appellants came in picture on the basis of CDR and there is conversation between the appellants and the deceased and the appellants admitted their involvement in the



alleged crime. Certain witnesses examined under Section 161 of the Cr.P.C. before the Police namely Rabindra Kumar and Sushil Kumar also corroborated such statement of the culprits Pankaj Kumar and Ranjan Kumar about the involvement of the appellants in the alleged crime. Social investigation report of the petitioners shows that their parents do not have any control over the juveniles. The release of the petitioners will not be in their interest because their release is likely to bring them into association with known criminal and also expose him to moral, physical and psychological danger and defeat the ends of justice. Learned counsel submits that petitioners have no criminal antecedent and they surrendered before the court below and no incriminating articles were recovered from their conscious possession. Learned counsel next submits that petitioners are not named in the FIR and have been implicated merely on suspicion based on secret information of spy.

5. Learned counsel for the petitioners relies upon Section 3 (i), (iv), (v) & (xiv) of the Juvenile Justice (Care and Protection of Children) Act, 2015 {hereinafter referred to as “the Act”} which is 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 under the Act.

7. In reference to Section 12 of the Act, learned counsel submits that bail to a child in conflict with law is a rule



and denial is 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 release of petitioners would bring them in association with bad elements of society.

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 petitioners and denial is exception as such this court may consider to pass appropriate order in accordance with the provisions of the Act for release the petitioners on bail in the best interest of the child.

10. From perusal of the record it appears that petitioners have remained in custody since 09-07-2022.

11. A Bench of this Court in the judgment reported in 2019(4) PLJR 833 Lalu Kumar @ Lalbabu @ Lallu Vs State of Bihar while interpreting Section 12 of the Act has laid down the principle that the Board while considering 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 Cr.P.C.

12. Having regard to the submissions made by the parties and taking into consideration the material on record, I am of the considered opinion that there is possibility of reform in the petitioners and the fathers of the petitioners is ready to take proper care of the petitioners after their release on bail as such there is no likelihood that the petitioners would fall into association with any known criminals. Further taking into consideration the materials on record as well as the period of incarceration of the petitioners and in the best interest of CICL, 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 in consonance with the aims and objectives of the Act.

13. In the result, I am of the opinion that the learned courts below have committed material irregularity in arriving at the conclusion that grant of bail to the petitioners would amount to defeating the ends of justice.

14. Accordingly, the judgment and order dated 12-04-2023 and 16-02-2023 respectively passed in Cr. Appeal No. 16 of 2023 and J.J.B. Case No. 625 / 2023, G.R. No. 689 /



2022 arising out of Obra PS Case No. 252 / 2022 are hereby set aside.

15. Let the petitioners, above named, be released on bail on furnishing bail bond of Rs. 10,000/- (ten thousand) each with two sureties of the like amount each to the satisfaction of learned Juvenile Justice Board, Aurangabad (Bihar) / court concerned in connection with J.J.B. No. 625 / 2023 arising out of Obra PS Case No. 252 of 2022 on the following conditions:-

(i) that one of the bailors shall be the father of the petitioners.

(ii) that the father of the petitioners shall file an affidavit before the learned Juvenile Justice Board, Aurangabad giving specific undertaking that after release of the petitioners on bail, he will take proper care of the petitioners and will not allow him to fall into bad company.

(Anil Kumar Sinha, J)

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