

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.435 of 2022**

Arising Out of PS. Case No.-188 Year-2019 Thana- FATEHPUR District- Gaya

MITHLESH KUMAR @ MITHLESH YADAV Son of Mahendra Yadav @ Mahindra Yadav Under the guardianship of his father namely Mahendra Yadav @ Mahindra Yadav, Son of Dhako Yadav, Resident of village - Bagodar, P.S.- Fatehpur, District – Gaya. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Anil Kumar Saxena, Adv.

For the Respondent/s : Mr. Manoj Kumar, APP

**CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER**

3 21-09-2023 Heard the parties.

2. The present Cr. Revision application has been filed against judgment and order dated 11.05.2022 passed in Juvenile Appeal No. 4/2022 by the learned Additional Sessions Judge 1st -cum-Children's Court, Gaya as well as order dated 02.02.2022 passed by learned Juvenile Justice Board, Gaya in connection with Fatehpur PS Case No. 188/2019 for the offence punishable under Section 376(D) IPC and Section 6 of the POCSO Act, whereunder the learned courts below have refused to release the revisionist/petitioner on bail.

3. Prosecution case as alleged in the FIR that on 20.08.2019 at about 11:00 PM when the informant had gone to ease herself, the petitioner along with one Umesh Mahto pounced upon her and they both committed rape upon her. The accused persons also threatened her of dire consequences if the



incident is disclosed to anyone. Just after ten minutes, father of the informant came to the place of occurrence and the accused persons fled away from there.

4. Learned counsel for the petitioner submits that the petitioner/revisionist has not committed any offence in the manner alleged and he has falsely been implicated in this case due to village rivalry. It has next been submitted that the petitioner has been declared juvenile by the Juvenile Justice Board on 02.12.2021 and he is in observation home since 22.11.2021. 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 release of the petitioner from the protective custody will defeat the ends of justice and the juvenile/petitioner may also fall in bad company. It has next been submitted that the learned court below has passed the impugned order mechanically and without application of judicial mind.

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 fall in the same environment.

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 protective custody since 22.11.2021 and he has been declared juvenile by Juvenile Justice Board, Gaya on 02.12.2021.

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 the petitioner is in custody since 22.11.2021 and there was no cogent material before the learned appellate court to come to the conclusion that the release of the petitioner from the protective custody will defeat the ends of justice and the juvenile/petitioner may also fall in bad company, 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 they are not consistent with the aims and objects of the Act.

13. Accordingly, judgment and order dated 11.05.2022 passed in Juvenile Appeal No. 4/2022 by the learned Additional Sessions Judge 1st -cum-Children’s Court, Gaya as



well as order dated 02.02.2022 passed by learned Juvenile Justice Board, Gaya in connection with Fatehpur PS Case No. 188/2019 for the offence punishable under Section 376(D) IPC and Section 6 of the POCSO Act, is hereby, set aside and the revisionist/petitioner, mentioned above, 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 aforesaid PS Case No. subject to the following conditions:-

(i) that one of the bailors will be mother of the petitioner.

(ii) that the mother of the petitioner shall file an affidavit before the Juvenile Justice Board, Gaya giving specific undertaking that after released of the petitioner on bail, she will take proper care of the petitioner and will not allow him to fall into bad company.

14. With the aforesaid observations and directions, the instant application stands allowed.

(Anil Kumar Sinha, J)

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