

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.441 of 2023

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

MANISH KUMAR Son of Sanjay Paswan @ Sanjay Ram Resident of Village - Purnadih, P.S.- Obra, District - Aurangabad (Bihar) Under guardianship of his father namely Sanjay Paswan @ Sanjay Ram, Son of Chanarik Ram, Resident of Village - Purnadih, P.S.- Obra, District - Aurangabad (Bihar)

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Aman Vishal, Advocate

For the Respondent/s : Mr. Jitendra Kumar Singh, A.P.P.

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

5 05-09-2023 Heard the parties.

2. This Criminal Revision application has been filed against the judgment and order dated 19.05.2023 passed in Cr. Appeal No. 20 of 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 petitioner has been rejected and further to release the



petitioner 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 petitioner submits that the petitioner was declared juvenile by the learned Juvenile Justice Board, Aurangabad (Bihar) after coming to the conclusion that the petitioner was minor at the time of alleged occurrence and he was aged about 15 years 4 months 19 days. Learned counsel further submits that against the order passed by Juvenile Justice Board, Aurangabad refusing the bail application, the petitioner preferred appeal being Cr. Appeal No. 20 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 appellant was not in the F.I.R. but the name of the appellant came in picture on the basis of suspicion based



on secret information of spy who has named six persons including the petitioner of having involved in the occurrence. The release of the petitioner will not be in his interest because his release is likely to bring him into association with known criminal and also expose him to moral, physical and psychological danger and defeat the ends of justice. Learned counsel further submits that petitioner has got no criminal antecedent and he surrendered before the court below and no incriminating articles were recovered from his conscious possession. Learned counsel next submits that petitioner is not named in the FIR and he has been implicated merely on suspicion based on secret information of spy. The other co-accused persons have been granted bail by this Court in Cr. Revision Nos. 390 of 2023 and 388 of 2023.

5. Learned counsel for the petitioner 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 petitioner would bring him 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 petitioner 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 petitioner on bail in the best interest of the child.

10. From perusal of the record it appears that petitioner has remained in custody since 16-09-2022.



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 petitioner and the father of the petitioner is ready to take proper care of the petitioner after his release on bail as such there is no likelihood that the petitioner 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 petitioner 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. Accordingly, the judgment and order dated 19.05.2023 and 16-02-2023 respectively passed in Cr. Appeal No. 20 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 petitioner, 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 petitioner.

(ii) that the father of the petitioner 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 petitioner and will not allow him to fall into bad company.

(Anil Kumar Sinha, J)

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