

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.445 of 2023

Arising Out of PS. Case No.-318 Year-2022 Thana- JANKINAGAR District- Purnia

AMIT KUMAR MODI @ AMIT KUMAR SON OF PRAMOD MODI R/O VILLAGE- LAUKAHI CHAKLA, P.S.- BARHARA KOTHI, DISTRICT- PURNEA AND THE FATHER IS NATURAL GUARDIAN OF THE PETITIONER NAMELY PRAMOD MODI, AGED ABOUT 58 YEARS, SON OF LATE BHUBNESHWAR MODI, R/O VILLAGE- LAUKAHI CHAKLA, P.S.- BARHARA KOTHI, DISTRICT- PURNEA

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Amit Kumar Anand
For the Respondent/s : Mr.Pranav Kumar

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 order dated 12.05.2023 passed in Cr. Appeal No. 15 of 2023 / CIS No. 15 of 2023 in connection with Jankinagar PS Case No. 318 of 2022 dated 16-12-2022 registered for the offence under Section 341 , 323, 324, 307, 379, 447, 504, 506 and 34 of the IPC and Section 27 of the Arms Act by learned 1st Additional Sessions Judge cum Special Judge, Purnea and against the order dated 01.03.2023 passed by Juvenile Justice Board, Purnea in GR No. 6350 of 2022 arising out of Jankinagar PS Case No. 318 / 2022.

3. As per the FIR, the petitioner fired upon one



Kailash Yadav, but the bullet did not hit him, passed above his head and the said Kailash Yadav had a very narrow escape.

4. Learned counsel for the petitioner submits that the petitioner was declared juvenile by the learned Juvenile Justice Board, Purnea after coming to the conclusion that the petitioner was minor at the time of alleged occurrence and was aged about 17 years 10 months 14 days. Learned counsel further submits that against the order passed by Juvenile Justice Board, Purnea refusing the bail application, the petitioner preferred appeal being Cr. Appeal No. 15 of 2023 before the learned appellate court, who by the impugned judgment arrived at erroneous conclusion that social investigation report of the petitioner shows that petitioner belongs to a poor family and works in Ludhiyana in a cloth factory and earns Rs. 8000/- per month and the appellant was having full knowledge about the crime which he committed. There is direct allegation of firing against the petitioner. The release of the petitioner will not be in his interest because his release is likely to bring him in association with known criminal and also expose him to moral, physical and psychological danger and defeat the ends of justice. Learned counsel next submits that all the witnesses are interested witnesses and there is no eye witness to the occurrence. He next



submits that the petitioner is a student of Class -XI and to ruin the career of the petitioner he has been implicated in this false case. He next submits that petitioner has been implicated in this case with oblique motive.

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 16-12-2022.

11. A Bench of this Court in the judgment reported in 2019(4) PLJR 833 Lalu Kumar 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. 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 petitioner would amount to defeating the ends of justice.

14. Accordingly, the judgment and order dated 12/05/2023 and 01.03.2023 respectively passed in Cr. Appeal No. 15 of 2023 / CIS No. 15 of 2023 and GR No. 6350 of 2022 arising out of Jankinagar PS Case No. 318 / 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) with two sureties of the like amount each to the satisfaction of learned Juvenile Justice Board, Purnea / court concerned in connection with GR No. 6350 / 2022 arising out of Jankinagar PS Case No. 318 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, Purnea giving specific undertaking that after release of the petitioner 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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