

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.489 of 2023

Arising Out of PS. Case No.-69 Year-2023 Thana- BASOPATTI District- Madhubani

RAJA KUMAR YADAV @ RAJA KUMAR S/O RAM KUMARI DEVI W/O
UMESH YADAV UNDER THE GUARDIANSHIP OF HER MOTHER
NAMELY RAM KUMARI DEVI WIFE OF UMESH YADAV, RESIDENT
OF VILLAGE- MANAPATTI (HATHAPUR), PS. BASOPATTI, DIST.
MADHUBANI

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Bhavesh Kumar Sah, Adv
For the Respondent/s : Mr.Nitya Nand Tiwary, APP

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

3 17-08-2023 Heard the parties.

2. The present Cr. Revision application has been filed against the judgment and order dated 28.06.2023 passed in Cr. Appeal No. 33/2023 by the learned 1st Additional Sessions Judge-cum-Special Judge, Children Court, Madhubani in connection with Basopatti PS Case No. 69/2023 dated 27.03.2023 for the offence punishable under Sections 272/273/34 of the IPC and Section 30 (a) of the Bihar Prohibition & Excise Act as well as order dated 24.05.2023 passed by learned Juvenile Justice Board, Madhubani whereby and whereunder the learned courts below have refused to release the revisionist/petitioner on bail.



3. The Police party on the basis of secret information arrived near Ghorbanki Middle School and upon seeing the police party some persons started fleeing away leaving their motorcycles upon which sacks of *nepali* illicit liquor were kept. Most of them succeeded in their escape and the petitioner was apprehended along with a Splendor motorcycle bearing Registration No. BR32F 5707. Altogether 450 litres of illicit *nepali* liquor were seized from all the three motorcycles.

4. Learned counsel for the petitioner submits that the petitioner/revisionist has not committed any offence in the manner alleged inasmuch no any illicit liquor has been recovered from his conscious possession. He next submits that the petitioner has been implicated in this case merely on the basis of his presence on the place of occurrence. 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 banking upon the report of District Probation Officer wherein it has been stated that it would be better for the CICAL to keep in protective custody for his improvement. 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 28.03.2023.

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.

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 28.03.2023.

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 except the report of District Probation Officer wherein it has been stated that it would be better for the CICL to keep in protective custody for his improvement and taking into consideration the period of protective custody of the petitioner, 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 28.06.2023 passed in Cr. Appeal No. 33/2023 by the learned 1st Additional Sessions Judge-cum-Special Judge, Children Court, Madhubani in connection with Basopatti PS Case No. 69/2023 dated 27.03.2023 for the offence punishable under Sections 272/273/34 of the IPC and Section 30 (a) of the Bihar Prohibition & Excise Act as well as order dated 24.05.2023 passed by learned Juvenile Justice Board, Madhubani is hereby, set aside and the revisionist/petitioner, ***Raja Kumar Yadav @ Raja 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 Juvenile Justice Board, Madhubani in connection with Basopatti PS Case No. 69/2023, subject to the condition that one of the father 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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