

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.500 of 2023**

Arising Out of PS. Case No.-190 Year-2022 Thana- TEGHRHA District- Begusarai

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GULSHAN KUMAR SON OF LATE RANDHIR SINGH RESIDENT OF
VILLAGE- NAYANAGAR ADHARPUR, PS- TEGHRA, DIST-
BEGUSARAI

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Pravin Kumar, Adv.

For the Respondent/s : Dr. Indihar Kumari, APP

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

2 08-08-2023 Heard the parties.

2. The present Cr. Revision application has been filed against the judgment and order dated 23.05.2023 passed in Cr. Appeal No. 19/2023 in connection with Teghra PS Case No. 190/2022, JJB No. 435/2022 by the learned 1st Additional Sessions Judge-cum-Presiding Officer, Children's Court, Begusarai, as well as order dated 11.04.2023 passed by Juvenile Justice Board, Begusarai for the offence punishable under Sections 364/34 IPC and later on Section 302, 120(B) of the IPC were added whereby and whereunder the learned courts below have refused to release the revisionist/petitioner on bail.

3. In the FIR lodged on 09.07.2022, the informant has shown her apprehension that her son, namely, Rajnish Kumar, may be murdered by the petitioner and five other



accused persons who had taken away her son forcibly.

4. Learned counsel for the petitioner submits that the petitioner/revisionist has not committed any offence in the manner alleged inasmuch no one has seen the occurrence. He next submits that the petitioner has been implicated on the basis of mere suspicion. The petitioner has got no antecedent and is in custody since 23.12.2022. 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 that if the order of release of the petitioner is passed, it may defeat the ends of justice and lead to an unwanted moral, physical and psychological danger to the CICL. 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 has been declared juvenile *vide* order dated 06.01.2023 by the JJB, Aurangabad.

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 as the petitioner has committed a heinous crime.

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 23.12.2022.

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 that if the order of release of the petitioner is passed, it may defeat the ends of justice and lead to an unwanted moral, physical and psychological danger to the CICL and taking into consideration that the petitioner has been implicated in this case on the basis of suspicion, he is in judicial custody since 23.12.2022 and he has been declared juvenile *vide* order dated 06.01.2023 by the JJB, Begusarai, 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



23.05.2023 passed in Cr. Appeal No. 19/2023 in connection with Teghra PS Case No. 190/2022, JJB No. 435/2022 by the learned 1st Additional Sessions Judge-cum-Presiding Officer, Children's Court, Begusarai, as well as order dated 11.04.2023 passed by Juvenile Justice Board, Begusarai for the offence punishable under Sections 364/34 IPC and later on Section 302, 120(B) of the IPC were added, is hereby, set aside and the revisionist/petitioner, **Gulshan 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, Begusarai in connection with Teghra PS Case No. 190/2022, JJB Case No 435/2022, subject to the condition that one of the bailors will be the **Fua** of the petitioner.

14. With the aforesaid observation and direction, the instant application is allowed.

(Anil Kumar Sinha, J)

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