

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.567 of 2023

Arising Out of PS. Case No.-22 Year-2023 Thana- LAKHISARAI District- Lakhisarai

SACHIN KUMAR son of Shailendr Mahto Village- lal diyara Ps- Pipariya
Dist- Lakhisarai

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s : Dr. Ramakant Akela, Adv.

For the Respondent/s : Mr. Bal Mukund Prasad Sinha, APP

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

2 12-09-2023 Heard the parties.

2. The present Cr. Revision application has been filed against judgment and order dated 18.05.2023 passed in Cr. Appeal No. 12/2022 by the learned Additional Sessions Judge 1st-cum-Special Judge, SC/ST, Lakhisarai as well as order dated 15.04.2023 passed by learned Juvenile Justice Board, Lakhisarai in connection with Lakhisarai PS Case No. 22/2023 for the offence punishable under Sections 302 IPC and Section 27 of the Arms Act, whereunder the learned courts below have refused to release the revisionist/petitioner on bail.

3. Prosecution case as narrated in the FIR that while the informant/Chaukidar was patrolling in *mohalla*, he was informed by the villagers that a carcass of an unidentified lady is lying in a ditch. As per information given to him, he reached at the place of occurrence and found the dead body of a lady



having two gun shot injuries on her head and hand.

4. Learned counsel for the petitioner submits that the petitioner/revisionist has not committed any offence in the manner alleged and he has been implicated in this case merely on the basis of suspicion. It has next been submitted that the FIR is against unknown and the petitioner has got no concern with the present offence. It is further submitted that a similarly situated co-accused has been granted bail by this Court in Cr. Revision No. 544/2023 *vide* order dated 05.09.2023. 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 will make him 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 13.01.2023 and he has been declared juvenile by Juvenile Justice Board, Buxar.

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 13.01.2023, another similarly situated co-accused has been granted bail by this Court in Cr. Revision No. 544/2023 *vide* order dated 05.09.2023, 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 make him fall in the 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 18.05.2023 passed in Cr. Appeal No. 12/2022 by the learned Additional Sessions Judge 1st-cum-Special Judge, SC/ST, Lakhisarai as well as order dated 15.04.2023 passed by learned



Juvenile Justice Board, Lakhisarai in connection with Lakhisarai PS Case No. 22/2023 for the offence punishable under Sections 302 IPC and Section 27 of the Arms Act, is hereby, set aside and the revisionist/petitioner, **SACHIN 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, Lakhisarai in connection with aforesaid PS Case No.

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

(Anil Kumar Sinha, J)

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