

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL REVISION No.585 of 2023**

Arising Out of PS. Case No.-171 Year-2023 Thana- SURSAND District- Sitamarhi

GAUTAM KUMAR S/O BAIDHNATH RAI R/O VILLAGE- NARHA KALA, P.S- BAJPATTI, DISTT.- SITAMARHI. UNDER GUARDIANSHIP OF HIS FATHER BAIDHNATH RAI AGED ABOUT 55 YEARS (MALE) S/O DHANPAT RAI, R/O VILLAGE- NARHA KALA, P.S- BAJPATTI, DISTT.- SITAMARHI.

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

**Appearance :**

For the Petitioner/s : Mr.Virendra Kumar  
For the Respondent/s : Mr.Prem Kumar Jha

**CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA**  
**ORAL ORDER**

2      04-09-2023                      Heard the parties.

2. The present Cr. Revision application has been filed against judgment and order dated 28.07.2023 passed in Cr. Appeal No. 52/2023 by the learned 1<sup>st</sup> Additional Sessions Judge -cum- Children Court, Sitamarhi along with order dated 23.05.2023 passed by Juvenile Justice Board, Sitamarhi in connection with JJB Case No. 1984/2023 arising out of Sursand PS Case No. 171/2023 for the offence punishable under Sections 363, 366, 366(A) of the IPC, whereunder both the learned courts below have refused to release the revisionist/petitioner on bail.

3. Prosecution case as narrated in the FIR, the



informant was informed by one co-villager, Dinanath Kumar that the petitioner along with one Amit Kumar abducted his minor daughter and took her away on a motorcycle. When informant went to the house of petitioner to inquire into the matter, the father of the petitioner boldly accepted that the petitioner and Amit Kumar have jointly abducted the victim and also abused the informant. Other family members of the petitioner threatened the informant with dire consequences.

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 due to oblique motive. It has next been submitted that the victim girl has not been recovered from the possession of the petitioner rather she out of her own will appeared before the police station. The victim girl in her statement recorded under Section 161 CrPC has denied the allegation of her abduction and she has stated therein that due to quarrelsome behaviour of his father she left her house out of her own sweet will. Further, the victim in her statement recorded under Section 164 CrPC exaggerated her statement and disclosed the name of the petitioner on the pressure exerted by her father. The findings arrived at by the learned appellate courts 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 from the protective custody will expose him to moral, physical and psychological danger and will also defeat the ends of justice and the juvenile/petitioner may also 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.

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(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.

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(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 custody since 01.05.2023 and the petitioner has been declared juvenile vide order of Juvenile Justice Board, Sitarmarhi on 12.05.2023.

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 regards 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 01.05.2023 and considering the statement of the victim recorded under Sections 161 and 164 of the CrPC, there was no material before the learned appellate court to come to the conclusion that the release of the petitioner from the protective custody will expose him to moral, physical and psychological danger and will also defeat the ends of justice, 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 consistent with the aims and objects of the Act.

13. Accordingly, judgment and order dated 28.07.2023 passed in Cr. Appeal No. 52/2023 by the learned 1<sup>st</sup> Additional Sessions Judge -cum- Children Court, Sitamarhi along with order dated 23.05.2023 passed by Juvenile Justice Board, Sitamarhi in connection with JJB Case No. 1984/2023 arising out of Sursand PS Case No. 171/2023 for the offence punishable under Sections 363, 366, 366(A) of the IPC are hereby, set aside and the revisionist/petitioner, **Gautam 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,



Sitamarhi in connection with aforementioned case.

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

**(Anil Kumar Sinha, J)**

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