

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.612 of 2023

Arising Out of PS. Case No.-165 Year-2023 Thana- BARAULI District- Gopalganj

JUVENILE A son of X village- Bada Badheya Ps- Barauli Dist- Gopalganj
(Santosh Kumar Singh @ Santosh Singh @ Loha Singh) Ps- Barauli Dist-
Gopalganj

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Setu Prateek, Adv.

For the Respondent/s : Mr. Uma Shankar Prasad Singh, APP

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

2 14-09-2023 Heard the parties.

2. The present Cr. Revision application has been filed against judgment and order dated 07.08.2023 passed in Cr. Appeal No. 31/2023 by the learned Additional Sessions Judge 1st -cum-Special Judge, Children's Court, Gopalganj as well as order dated 31.05.2023 passed by learned Juvenile Justice Board, Gopalganj in connection with Barauli PS Case No. 165/2023 for the offence punishable under Sections 302/34 IPC, whereunder the learned courts below have refused to release the revisionist/petitioner on bail.

3. Prosecution case as alleged in the FIR that the juvenile/petitioner out of grudge stabbed the informant's nephew near the ear causing serious injuries which led the



death of the victim during course of treatment in the hospital.

4. Learned counsel for the petitioner submits that the petitioner/revisionist has not committed any offence in the manner alleged and he has falsely been implicated in this case due to dirty village politics. It has next been submitted that the petitioner has got no criminal antecedent and he has been declared juvenile by the learned Juvenile Justice Board, Gopalganj vide order dated 10.05.2023. 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 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.

(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 20.04.2023 and he has been declared juvenile by Juvenile Justice Board, Gopalganj on 10.05.2023.

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 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 20.04.2023 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 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, 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 07.08.2023 passed in Cr. Appeal No. 31/2023 by the learned



Additional Sessions Judge 1st -cum-Special Judge, Children's Court, Gopalganj as well as order dated 31.05.2023 passed by learned Juvenile Justice Board, Gopalganj in connection with Barauli PS Case No. 165/2023 for the offence punishable under Sections 302/34 IPC, is hereby, set aside and the revisionist/petitioner, mentioned above, 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, Gopalganj 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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