

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No 274 of 2015

Arising Out of PS.Case No. -null Year- null Thana -null District- SEKHPURA

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Santosh Kumar son of Rajendra Singh @ Rajendra Prasad Singh resident of village Sarmera, P.S. Sarmera, District Nalanda through his father and natural guardian Sri Rajendra Prasad Singh, son of late Ghoghan Singh, resident of village Sarmera, P.S. Sarmera, District Nalanda.

.... Petitioner/s

Versus

The State of Bihar.

.... Respondent/s

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Appearance :

For the Petitioner/s : M/s Ajay Kr Thakur & Md Imteyaz Ahmad, Advocates

For the State : Mr Amit Kumar Rakesh, APP

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CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH

ORAL JUDGMENT

Date: 25-05-2015

The most ridiculous situation is where the Judicial Officers have either forgotten or abdicated their judicial functions. The petitioner was made an accused in Barbigha Police Station Case No 158 of 2004 (GR No 509 of 2004) instituted under Sections 302, 307/34 of Indian Penal Code and Section 27 of Arms Act. When petitioner was apprehended, he pleaded juvenility. Ultimately, the Juvenile Justice Board found that his date of birth was 18.03.1988 and, as such, on the date of occurrence, he would be slightly above 16 years of age. Petitioner then filed an application to be released on bail. The Juvenile Justice Board, taking into account the gravity of offence alleged, refused to release him and authorized his detention in

civil prison. Criminal Appeal was preferred against the said order which has been dismissed by the Additional Sessions Judge, Sheikhpura by his order dated 28.02.2015. Hence, this criminal revision application.

This Court is simply amazed. The Juvenile Justice (Care and Protection of Children) Amendment Act, 2006 (for brevity, *the Act*) clearly provides, inter alia, that no juvenile can be tried or punished except in the manner as contained in the said Act. Juvenile is a person below 18 years. The Act further provides that the question of juvenility is with reference to the date of occurrence and not the age when the person is brought before or is to be tried. It further provides that no juvenile means thereby no person, who was juvenile at the time of occurrence, can at all be sentenced or kept in prison. It is further provided that a person, who ceases to be a juvenile, cannot be placed in Care Home.

To my little understanding, the combined reading of these statutory mandatory provisions are that detention in Care Home can only be upto the age of 18 years and if the person was juvenile when he was alleged to have committed an offence, he can never be permitted to be kept in detention in a prison whatever may be the provision of Section 12 of the Act. The true import of Section 12 of the Act is that if the release would expose the juvenile to the company

of criminals, he may not be released but that does not mean that his detention can be authorized in a jail. Being more than 18 years of age, he may not be authorized to be detained in the Care Home. The net result is that upon attaining majority, a juvenile, in conflict with law, has to be released with care of the parents.

Here, I may only quote from the judgment since reported in the case of *Sachin Kumar Gupta @ Sachin Kumar – Versus- State of Bihar & Another:*

“When a procedure is prescribed by the Legislature, it is not open for the Court to substitute a different one according to its notion of justice. When the Legislature has spoken, the Judges cannot afford to be wiser.”

Thus, the orders of the Juvenile Justice Board and the Additional Sessions Judge, Sheikhpura are unsustainable. They are set aside and it is directed that the petitioner be released forthwith without any condition or bond. He would undertake to cooperate whatever enquiry that may be conducted by the Juvenile Justice Board for whatever purpose.

This application is allowed.

(Navaniti Prasad Singh, J)

M.E.H./-

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