

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.437 of 2016

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

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1. Raju Kumar @ Prakash Kumar son of Bindeshwari Yadav Resident of Village-
Rahat Ganj, P.S.- Bihta District- Patna.

.... Petitioner

Versus

1. The State of Bihar

.... Respondent

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Appearance :

For the Petitioner : Mr. Sanjay Kumar Sharma, Advocate

For the State : Mr. Kumar Ranjit Ranjan, APP

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**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

JUDGMENT AND ORDER

ORAL

Date: 16-12-2016

Heard learned Counsel for the petitioner and
learned Additional Public Prosecutor representing the State.

2. The petitioner is a juvenile. He is aggrieved by
an order, dated 30.03.2016, passed, in Criminal Appeal No. 05
of 2016, by the learned Additional Sessions Judge I, Patna,
whereby he has affirmed the order, dated 30.10.2015, passed,
in JJB Case No. 251 of 2015, arising out of Bihta Police Station
Case No. 130 of 2015, by Juvenile Justice Board, Patna,
rejecting the petitioner's prayer for release on bail.

3. The petitioner is an accused of commission of
offence punishable under Section 376 of the Indian Penal Code
and Sections 4, 8 and 12 of the Protection of Children from



Sexual Offence Act, 2012.

4. When the case was heard on the last occasion on 25.11.2016, the Juvenile Justice Board, Patna, was directed to inform as regards the stage of enquiry contemplated under Section 14 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as the "J. J. Act"). This is to be noted that Section 14 of the J. J. Act requires that enquiry under the said section shall be completed within a period of four months from the date of first production of the child before the Board unless the period is extended for a maximum period of two more months by the Board, having regard to circumstances of the case and after recorded the reason, in writing, for such extension. Sub-section (3) of Section 14 of the J. J. Act contemplates that a preliminary assessment in case of heinous offence as contemplated under Section 15 of the 2015 Act shall be disposed of by the Board within a period of three months from the date of first production of the child before the Board. Section 14 (5) (f) of the 2015 Act deals with the enquiry of heinous offence as under:-

**"14. Inquiry by Board
regarding child in conflict with law.-**

- (1) xx xx xx
- (2) xx xx xx
- (3) xx xx xx
- (4) xx xx xx



(5) The Board shall take the following steps to ensure fair and speedy inquiry, namely:—

(a) xx xx xx

(b) xx xx xx

(c) xx xx xx

(d) xx xx xx

(e) xx xx xx

(f) inquiry of heinous offences,—

(i) for child below the age of sixteen years as on the date of commission of an offence shall be disposed of by the Board under clause (e);

(ii) for child above the age of sixteen years as on the date of commission of an offence shall be dealt with in the manner prescribed under section 15.”

5. Evidently, Section 14 (5) (f) (ii) of the 2015 Act has to be read with Sections 15 and 18 (iii) of the 2015 Act, which reads thus:-

“15. Preliminary assessment into heinous offences by Board.- (1) In case of a heinous offence alleged to have been committed by a child, who has completed or is above the age of sixteen years, the Board shall conduct a preliminary assessment with regard to his mental and physical capacity to commit such offence, ability to understand the



consequences of the offence and the circumstances in which he allegedly committed the offence, and may pass an order in accordance with the provisions of subsection (3) of section 18:

Provided that for such an assessment, the Board may take the assistance of experienced psychologists or psycho-social workers or other experts.

Explanation.— For the purposes of this section, it is clarified that preliminary assessment is not a trial, but is to assess the capacity of such child to commit and understand the consequences of the alleged offence.

(2) Where the Board is satisfied on preliminary assessment that the matter should be disposed of by the Board, then the Board shall follow the procedure, as far as may be, for trial in summons case under the Code of Criminal Procedure, 1973:

Provided that the order of the Board to dispose of the matter shall be appealable under sub-section (2) of section 101:

Provided further that the assessment under this section shall be completed within the period specified in section 14.

18. Orders regarding child found to be in conflict with law.-

(1) xx xx xx



(2) xx xx xx

(3) Where the Board after preliminary assessment under section 15 pass an order that there is a need for trial of the said child as an adult, then the Board may order transfer of the trial of the case to the Children's Court having jurisdiction to try such offences."

6. A report has been submitted by the Juvenile Justice Board, Patna, in compliance of the previous order of this Court, dated 25.11.2016.

7. It transpires from the said report that the petitioner was declared to be a juvenile on 07.09.2015. Till date, no enquiry appears to have completed as contemplated under the provisions of the 2015 Act, as noticed above.

8. The petitioner is in Special Home, Patna, since 28.02.2015. His prayer for release on bail has been rejected on the ground that if so released, it will cause mental, physical and psychological danger to him.

9. Learned Counsel appearing on behalf of the petitioner has submitted that the father of the petitioner undertakes to look after the safety, security and welfare of the petitioner.

10. Considering the above facts and circumstances and submission, this revision application is allowed. The judgment and order, dated 30.03.2016, passed, in Criminal



Appeal No. 05 of 2016, by the learned Additional Sessions Judge I, Patna, is hereby set aside.

11. Let the petitioner be released on bail on furnishing an affidavit by his father to the effect that he will ensure safety, security and welfare of the petitioner and will not allow him to fall in bad company. In addition to the affidavit, the father of the petitioner will also be required to furnish personal bond of Rs. 10,000/- with two sureties of the like amount each to the satisfaction of the learned Juvenile Justice Board, Patna, in connection with J. J. B. Case No. 251 of 2015, arising out of Bihta Police Station Case No. 130 of 2015. On furnishing of such affidavit and sureties, the petitioner shall be released on bail.

(Chakradhari Sharan Singh, J.)

Prabhakar Anand/-

AFR/NAFR	NAFR
CAV DATE	N.A.
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