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IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.169 of 2016

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

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1. Ravi Kumar Raj @ Ravi Kumar Rai @ Ravi Raj @ Tinku Kumar S/o Ramvinod Roy, Resident of village- Hasanpur, Jitwarpur, P.S. Samastipur Muffasil, District- Samastipur under the guardianship of the Shoshila Devi, mother of the petitioner

.... Petitioner/s

Versus

1. The State of Bihar

.... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Bijay Bhushan Prasad
For the Respondent/s : Mr. Anil Kumar Singh No. 1

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 19-08-2016

The petitioner has been made accused in connection with Mufassil P.S. Case No. 266 of 2015 registered under sections 324, 328, 420, 379/34 of the Indian Penal Code. He was arrested by the police on the date of institution of the first information report itself i.e. 03.09.2015. Initially, he was remanded to judicial custody by the concerned Magistrate. However, the mother of the petitioner filed an application before the learned Magistrate claiming that the petitioner was a juvenile on the alleged date of occurrence. Subsequently, vide order dated 11.09.2015 passed by the Juvenile Justice Board, the petitioner was declared a juvenile in conflict with law. It is submitted that thereafter the petitioner filed an application for his release on bail before the Juvenile Justice Board, Samastipur

but the prayer for bail was rejected vide order dated 14.09.2015. The aforesaid order dated 14.09.2015 was challenged in appeal under section 52 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as the Act of 2000) before the learned Sessions Judge, Samastipur, who vide order dated 23.11.2015 passed in Criminal Appeal No. 74 of 2015 dismissed the appeal against the aforesaid order dated 1409.2015 and rejected the application for bail of the petitioner.

It is submitted by the learned counsel for the petitioner that the Juvenile Justice Board had rejected the application for bail on the ground of seriousness of the offence whereas the lower appellate court has rejected the application for bail on the ground that if released, the petitioner is likely to fall into association with the known criminal and his release would defeat the ends of justice. He has submitted that neither the Juvenile Justice Board nor the appellate court has passed the order in conformity with the object of the Act of 2000.

On the other hand, learned counsel for the State has opposed the application preferred by the petitioner. He has submitted that the offence alleged is serious in nature and the Juvenile Justice Board and the appellate court have rightly held that in case of release, the petitioner may go into association with known criminals

and it would defeat the ends of justice.

I have heard learned counsel for the respective parties and perused the report.

Section 12 of the Act of 2000 provides for bail to all persons who are apparently a juvenile irrespective of seriousness of the offence alleged. It reads as under :-

> "12. Bail of juvenile – (1) When any person accused of a bailable or non-bailable offence, and apparently a juvenile, is arrested or detained or appears or is brought before a Board, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, be released on bail with or without surety or placed under the supervision of Probation Officer or under the care of any fit institution or fit person but he shall not be so released if there appear reasonable grounds for believing that the release is likely to bring him into association with any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice.
>
> (2) When such person having been arrested is not released on bail under sub-section (1) by the officer incharge of the police station, such officer shall cause him to be kept only in an observation home in the prescribed manner until he can be brought before a Board.
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> (3) When such person is not released on bail under sub-section (1) by the Board it shall, instead of committing him to prison, make an order sending him to an observation home or a place of safety for such period during the pendency of the inquiry regarding him as may be specified in the order."

Apparently under the Act of 2000 bail and not jail is a rule. Though the learned court below has opined that the release

of the petitioner would bring him into association with known criminal and would defeat the ends of justice, there is no reasonable ground for forming such an opinion. The opinion formed by the lower appellate court is based merely on conjecture and surmises. Apparently, there was neither any social investigation report by the Probation Officer or by any other competent authority to form such an opinion. In my opinion, both the Juvenile Justice Board and the appellate court have erred in law and have not appreciated the objects of the Act of 2000 in correct perspective. Further more, from the materials available on record it would be evident that the inquiry proceeding has not yet commenced. The police report is yet to be produced before the Juvenile Justice Board. Proviso to Section 14(1) of the Act of 2000 contemplates for a speedy enquiry. It mandates that an enquiry under this Section should be completed within a period of four months unless the period is extended by the Board having regard to the circumstances of the case and in special cases after recording the reasons in writing for such extension.

In my opinion, there can be no justification for not commencing the enquiry even after lapse of about one year. Accordingly, the impugned order dated 23.11.2015 passed in Criminal Appeal No. 74 of 2015 rejecting bail of the petitioner is set aside and the petitioner is directed to be released on the petitioner's father

furnishing an affidavit to the effect that he shall take care of his son and that he shall not permit his son to form an association with any gang of bad company. In addition to the aforesaid affidavit, he shall also furnish a personal bond for the sum of Rs.10000/- (Rupees ten thousand) with two sureties of the like amount each to the satisfaction of the Juvenile Justice Board, Samastipur. On furnishing of such bond and surety as also the affidavit, the petitioner is directed to be released on bail by the Juvenile Justice Board.

The revision application stands allowed.

(Ashwani Kumar Singh, J)

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