

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.438 of 2014

Arising Out of PS.Case No. -9 Year- 2008 Thana -GOVERNMENT OFFICIAL COMP. District-
MUZAFFARPUR

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1. Sajid Khan @ Ainullah son of Late Kalam Khan @ Ajmat Ullah
, resident of village and Post Office Bhatni Dadan, Police
Station Rampur Karkhana , District - Deoria (U.P)

.... **Appellant**

Versus

1. The State of Bihar

.... **Respondent**

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Appearance :

For the Appellant : Mr. Madhusudan Kumar

For the State : Ms. Abha Singh

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

JUDGMENT AND ORDER

ORAL

Date: 15.03.2017

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

2. The appellant stood convicted of the offences
punishable under Sections 20 (b) (ii) (C), 23(c), 25 and 29 of
the Narcotic Drugs and Psychotropic Substances Act, 1985
(hereinafter referred to as "the Act"). He has accordingly been
sentenced to undergo rigorous imprisonment for a period of 10
years and fine of Rs. 1,00,000/- for the offence punishable
under Section 20 (b) (ii) (C) of the Act, 10 years and fine of
Rs. 1,00,000/- for the offence punishable under Section 23 (c)
of the Act, rigorous imprisonment for a period of 10 years and
fine of Rs. 1,00,000/- for the offence punishable under Section



25 of the Act and rigorous imprisonment for a period of 10 years and fine of Rs. 1,00,000/- for the offence punishable under Section 29 of the Act. In default of payment of fine, the appellant has been directed to undergo rigorous imprisonment for a period of four years. All the sentences were directed to run concurrently.

3. The appellant is in custody, upon his conviction and sentence, by the impugned judgment of conviction, dated 23.06.2014, and order of sentence, dated 01.07.2014, passed by learned Additional Sessions Judge VI, Muzaffarpur, in D.R.I. Case No. 09 of 2008/Trial No. 01 of 2012, since 24.03.2009, which is not in dispute.

4. The appellant, during the pendency of the present appeal preferred against the said judgment and order, had raised his claim of juvenility as on the date of occurrence, i.e. 24.03.2009. Accordingly, the Juvenile Justice Board, Muzaffarpur, was directed to determine the appellant's claim of juvenility. By an order, dated 07.01.2017, passed in Misc. Case No. 02 of 2015, the Juvenile Justice Board, Muzaffarpur, has declared the appellant to be a juvenile as on the date of occurrence. The determination of juvenility of the appellant is also not in dispute.

5. Learned Counsel for the appellant, in that background, has submitted that even without going into the



findings of conviction, the appellant deserves to be set free since he has been declared as juvenile and he has remained in custody for more than seven years. He has relied on a Supreme Court's decision, in the case of **Darga Ram @ Gunga v. State of Rajasthan**, reported in **2015 (1) PLJR 432 (SC)**, and a Division Bench decision of this Court, in the case of **Shamshad v. The State of Bihar through the Principal Secretary, Department of Home, Government of Bihar, Patna, and Another**, reported in **2015 (3) PLJR 703**.

6. I find substance in the submissions advanced on behalf of the appellant that he cannot be allowed to remain in custody any more in view of the clear provisions under the Juvenile Justice (Care and Protection of Children) Act, 2000.

7. Learned Counsel for the appellant has rightly relied on paragraphs 16 and 17 of the Supreme Court's decision, in the case of **Darga Ram** (supra), which read thus:-

"16. In the totality of the circumstances, we have persuaded ourselves to go by the age estimate given by the Medical Board and to declare the Appellant to be a juvenile as on the date of the occurrence no matter the offence committed by him is heinous and but for the protection available to him under the Act the Appellant may have deserved the severest punishment permissible under



law. The fact that the Appellant has been in jail for nearly 14 years is the only cold comfort for us to let out of jail one who has been found guilty of rape and murder of an innocent young child.

17. In the result, this appeal succeeds but only in part and to the extent that while the conviction of the Appellant for offences Under Section 302 and 376 of Indian Penal Code is affirmed the sentence awarded to him shall stand set aside with a direction that the Appellant shall be set free from prison unless required in connection with any other case.”

8. Taking the same line, as in the case of **Darga Ram** (supra), this appeal is allowed in part, and without interfering with the conviction of the appellant, sentence awarded to him stands set aside.

9. Let the appellant be released from prison forthwith unless he is required in connection with any other case.

(Chakradhari Sharan Singh, J.)

Prabhakar Anand/-

AFR/NAFR	NAFR
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