

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.79 of 2017

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1. Sharun Das, Son of Mahendra Das, R/o Village- Fedali Bigha, P.S.-
Barbigha, District- Sheikhpura.

.... Petitioner/s

Versus

1. The State of Bihar.

2. Kailash Das, S/o Sukhdeo Das, resident of Village- Fedali Bigha, P.S.-
Barbigha, District- Sheikhpura.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dr. Anjani Pd. Singh, Adv.

For the Respondent/s : Mr. Sri Uday Pratap Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI

SHARAN SINGH

ORAL ORDER

5 11-04-2017 The petitioner is an accused in Barbigha P.S. Case No.

138 of 2015, registered for the offences punishable under Section

376 read with Section 34 of the Indian Penal Code and Sections

4 and 6 of the Protection of Children from Sexual Offences Act,

2012 (hereinafter referred to as the '*POCSO Act*').

The date of occurrence, as per the First Information
Report is 21.04.2015, for which an FIR was registered on
23.04.2015. As on the date of occurrence, petitioner has been
found to be between 16 to 17 years. He was apprehended on
23.04.2015 and he was kept in observation since then.



On completion of enquiry, contemplated under Section 14 of the Juvenile Justice (Care and Protection of Children) Act, 2000, the Juvenile Justice Board (hereinafter referred to as '*the Board*') recorded its satisfaction that the petitioner had committed offences punishable under Section 376 of the Indian Penal Code and Section 4 of the POCSO Act. After having reached this finding, the Board made an order, under Section 18 of the Act, directing the petitioner to be sent to a Special Home for a period of three years for each of the offence. The learned appellate court i.e. court of learned Additional Sessions Judge I, Sheikhpura, by his judgment and order dated 01.12.2016, passed in Cr. Appeal No. 30/2016, has affirmed the finding of the guilt of the petitioner recorded by the Board. However, invoking Section 42 of the Act, learned appellate court has held him guilty of the offence punishable under Section 4 of the POCSO Act, on the reasoning that in terms of Section 42 of the Act, if a juvenile is to be convicted for the offence punishable under two different provisions of law, he has to be punished for the offence committed under the provision which prescribes greater sentence. The interpretation of Section 42 of the POCSO Act, as given by learned appellate court, does not appear to be logically sound. However, in the present case, the petitioner has admittedly remained in observation home for nearly two years.



Learned counsel for the petitioner has submitted that though technically an offence under Section 376 of the Indian Penal Code is made out on the basis of what had been alleged in the First Information Report and the offence adduced at the trial court, considering the age of the petitioner, the Board and the appellate court ought to have taken a lenient view and instead of requiring the petitioner to be sent to a Special Home for a period of three years, the court below and the Board ought to have directed the petitioner to be released on probation of good conduct under the care and protection of his parents. He has submitted that the medical report did not support the allegation of sexual assault.

I find substance in the submission made on behalf of the petitioner that considering the nature of allegation made against him, the Board and the learned appellate court ought to have taken a lenient view in the larger interest of welfare of the juvenile and the extreme order of him being sent to Special Home, for a maximum period of three years, was not required to be passed.

Accordingly, while not interfering with the finding recorded by the learned court below, I modify the order, passed under Section 18 of the Act, by directing that the petitioner be released on probation of good conduct and be placed under the



care of his father for his good behaviour and his well being, for a period of one year from today.

With the aforesaid observation, this application stands disposed of.

(Chakradhari Sharan Singh, J.)

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