

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.1416 of 2016

Arising Out of PS.Case No. -38 Year- 2016 Thana -MAHILA PS District- GAYA

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1. Mantu Kumar @ Bona, S/o Ramjit Sao, R/o Village- Gosai.. Shivganj,
P.S.- Barachatti, District Gaya.

.... Appellant/s

Versus

1. The State of Bihar.

.... Respondent/s

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with

Criminal Appeal (SJ) No.1529 of 2017

Arising Out of PS.Case No. -89 Year- 2016 Thana -SC/ST District- MUZAFFARPUR

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1. Vishal @ Vishal Kumar Son of Babita Kumari her mother and Natural
Guardian Smt. Babita Singh Wife of Shashi Bhushan Singh @ Fauji Singh,
Resident of Kalambag Chowk , Gannipur, Police Station- Kazi
Mohammadpur, District- Muzaffarpur.

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

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Appearance :

(In CR. APP (SJ) No.1416 of 2016)

For the Appellant/s : Mr. Sanjay Kumar, Adv

For the Respondent/s : Mr. Binay Krishna, APP

(In CR. APP (SJ) No.1529 of 2017)

For the Appellant/s : Mr. Dr. Rajesh Kumar Singh, Adv

For the Respondent/s : Smt Usha Kumari No-1, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL ORDER

9 31-07-2017 Cr. Appeal (SJ) No. 1416/2016 wherein Mantu

Kumar @ Bona is the appellant and Cr. Appeal (SJ) No.

1416/2016 wherein Vishal @ Vishal Kumar is the appellant have

been heard together and are being decided by a common order on

account of unison of constituent.

So far, appellant Mantu Kumar @ Bona (Cr. Appeal (SJ)
No. 1416/2016) is concerned, there happens to be allegation



against him to have raped a girl aged about four years.

Learned counsel for the appellant has submitted that when the Court has opened its mind then learned counsel like him should not argue before the Court. That being so, the plea of the appellant has minutely been gone through.

From the record, it transpires that prayer for bail of the appellant has been rejected vide order dated 22.07.2016 by ADJ-1st –cum- Special Judge, POCSO Act, Gaya and during course thereof, the learned lower court had taken into consideration the materials having been collected during course of investigation against him. It is further evident that at an appropriate stage, the status of the appellant has been perceived whereupon the matter was referred to Juvenile Justice Board where, during course of enquiry as other materials were not produced on behalf of appellant, therefore, Board required medical report which, identified the appellant to be in between 17-18 years of age. Report was called for at an earlier occasion which has been submitted by the Special Judge, Children Court by Letter No. 377 dated 22.07.2017 wherefrom it is evident that the finding relating to Section 18(3) of the Juvenile Justice Act, is yet to be performed by the Board. That being so, the Board is directed to complete the aforesaid paraphernalia within four weeks after receipt of the order



and in likewise manner, the Children Court will decide the issue in terms of Section 19(1) of the Juvenile Justice Act in a manner as prescribed under Rule 13 (6) of the Act within next four weeks, then thereafter, if the matter is placed before him in accordance with Section 18(3) of the Act.

That being so, the Cr. Appeal (SJ) No. 1416/2016 is disposed of in terms thereof giving an opportunity to the appellant to pray before the Board or Children Court, whichever may be, after completion of the aforesaid exercise. Prayer for bail under the proper provisions so commanding situation will be considered accordingly.

With regard to Cr. Appeal (SJ) No. 1529/2017, it is visualizing from the written report that students of the Central School have clashed amongst themselves, unfortunately, one of the groups were belonging to Scheduled Castes. It is further evident that the learned lower court had not decided the issue in terms of Section 19(1) of the Juvenile Justice Act. That got relevancy in the background of the fact that if the Children Court comes to a conclusion, that case of the appellant should be proceeded with in terms of Section 19(1) (b) of the Act, then in that event, the Court will perform its duty like a Board and in that event, Section 12 of the Juvenile Justice Act will be available to



the appellant, contrary to it, certainly application of Cr.P.C guiding the trial will give an opportunity to the appellant to proceed in terms of Section 437 and so on of the CrPC with regard to the prayer for bail.

As such, the learned Children Court is directed to decide the issue within a fortnight from the receipt of the instant order simultaneously, appellant is also directed to proceed in terms thereof.

This appeal is also disposed of in terms thereof.

(Aditya Kumar Trivedi, J)

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