

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.25 of 2018

Arising Out of PS. Case No.-441 Year-2017 Thana- BIHARSHARIF District- Nalanda

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Pappu Kumar @ Raj Kumar S/o Bhuneshwar @ Bhuneshwar Prasad,
Resident of Village-Shatakpur, P.S. Bind, District-Nalanda.

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Hansraj

For the Respondent/s : Mr. SRI SANJAY KUMAR SHARMA

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL ORDER

4 13-03-2018 The juvenile/petitioner was made accused in Bihar

P.S. Case No. 441 of 2017 dated 04.08.2017 instituted for

the offence under Section 366A/34 of the Indian Penal

Code.

On the date of occurrence, the age of the petitioner

has been assessed at more than 16 and less than 18

years.

The Juvenile Justice Board, by order dated

18.10.2017, rejected the prayer of the juvenile/petitioner

for being released from the remand home where he has

been lodged in connection with the aforesaid case since

05.08.2017.



The learned appellate court also did not find it expedient to release the juvenile/petitioner from remand home by his order dated 28.11.2017.

The records reveal that after the assessment of the age of the juvenile/petitioner, there was no adjudication with respect to the mental capability of the juvenile/petitioner in accordance with Section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2015. This is mandatory in view of the petitioner having been made accused in a case of a serious offence as defined under Section 2(33) of the Act, referred to above.

Since there has not been any assessment of the juvenile in terms of Section 15 of the Act, the order passed by the J.J.B. and the appellate court are liable to be quashed.

For easy reference, provision of Section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2015 is being extracted below:

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 sub-section (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.

(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 (2 of 1974):

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.

(Emphasis supplied.)

Both the orders are therefore set aside.

The case is remanded to the Juvenile Justice Board, Nalanda to pass a fresh order after assessing whether the juvenile/petitioner requires to be treated and tried as an adult or as a child.

The aforesaid order shall be passed without any unnecessary delay and preferably within a period of thirty days from the date of production/communication of this order.

With the aforesaid direction, the present revision petition is disposed of.

(Ashutosh Kumar, J)

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