

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.1112 of 2018

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1. Gore Kumar @ Santosh Kushwaha, Son of Pragash Mahto @ Om Prakash Mahto, Resident of Village- Gangata, P.S. Narhat, District- Nawada, through his father and natural guardian Pragash Mahto @ Om Prakash Mahto, Son of Late Chamari Mahto, Resident of Village- Gangata, P.S. Narhat, District- Nawada.

.... Petitioner/s

Versus

1. The State of Bihar.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajkishor Prasad, Adv.

For the Respondent/s : Mr. Anil Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

2 11-10-2018 This revision application is being preferred against the order dated 21.08.2018 passed by 1st Additional Sessions Judge cum Special Judge POCSO, Nawada in Criminal Appeal No. 14/2018, rejecting the prayer for bail of the petitioner preferred against order dated 6.6.2018 passed by the Juvenile Justice Board, Nawada in connection with G.R./C/1974/17 / J.I.N. 605/18 arising out of Narhat P.S. Case No. 108/17 registered for offences punishable under Sections 376/34 of the Indian Penal Code and Section 4/12 of the Protection of Children from Sexual Offences Act, 2012, whereby the prayer for release of the petitioner on bail was rejected.

2. Case of the prosecution in short is that on 03.02.2017, while the informant had gone to attend the call of nature in the night at



about 12 'O' clock, the petitioner along with one Praveen Kushwaha @ Bogda committed rape on her.

3. It appears that the petitioner had earlier preferred regular bail application before this Court in Criminal Miscellaneous No. 12722/18 and the same was disposed of vide order dated 12.04.2018 by coordinate Bench of this Court with following observation:-

“Considering the aforementioned submissions, prayer for bail of the petitioner is allowed. Let the petitioner, mentioned above, be released on bail on furnishing bail bond of Rs. 10,000/- with two sureties of like amount each to the satisfaction of the Additional Sessions Judge I cum Special Judge, Nawada in Narhat Police Station Case No. 108 of 2017 (POCSO Case No. 23 of 2017) on the following conditions:-

One of the bailors will be a close relative of the petitioners who will give an affidavit giving genealogy as to how they are related with the petitioners. The bailor will also undertake to inform the court if there is any change in the address of the petitioner and

The petitioners will be well represented on each date and if they fail to do so on two consecutive dates, their bail will be liable to be cancelled.

The dispute regarding parentage of the petitioner will be examined by the court below and if it is found that the petitioner is the same person who has been named in Narhat Police Station Case No. 104 of 2017 dated 10.7.2017, then he



would not be enured to the benefits of this order”.

4. However, it appears that the learned Additional Sessions Judge has not accepted the bail bond of the petitioner on the ground that it is the petitioner, who is accused in Narhat Police Station Case No. 104 of 2017 dated 10.07.2017, in view of the direction of this Court as stated above. It further appears that petitioner and other accused persons of this case claimed themselves to be juvenile and their prayer for juvenility was considered and they were declared juvenile by Additional Sessions Judge, Nawada on 27.03.2018 and other accused persons were found to be aged about below 16 years, whereas, the petitioner was found to be below 18 years of age, as such, he transferred the case to the Juvenile Justice Board, Nawada. Thereafter, the petitioner made prayer for grant of bail before the Juvenile Justice Board, Nawada, which was rejected by the Juvenile Justice Board, Nawada vide order dated 6.6.2018 on the ground that the offence is heinous in nature. Against the aforesaid order, the petitioner preferred Criminal Appeal and the same was also dismissed by the 1st Additional Sessions Judge, Nawada vide order dated 21.08.2018 passed in Criminal Appeal No. 14/18 on the ground that the appellant/petitioner has got criminal antecedent.

5. Being aggrieved, the petitioner has preferred the instant



revision application before this Court.

6. It appears from perusal of the record it appears that as per the provisions contained in Section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as the 'Act') there is no preliminary assessment report of the petitioner about his mental and physical capacity to commit the offence and has the ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence, as the petitioner's age has been assessed to be more than sixteen years.

7. It also appears that the provisions of Section 14(f) (ii) and Section 15 of the Act have also not been complied with and there is no order under Section 18(3) of the Act, which provides as follows:-

“(3) Where the Board after preliminary assessment under Section 15 pass an order that there is a need for trial of the said child as an adult, then the Board may order transfer of the trial of the case to the Children's Court having jurisdiction to try offences”.

8. In such view of the matter, there is no assessment of age by the Juvenile Justice Board, Nawada, who is competent to make enquiry regarding the child in conflict with law and Section 94 of the Act provides for procedure to be followed for presumption and determination of age, which reads as follows:-



1. Where, it is obvious to the Committee or the Board, based on the appearance of the person brought before it under any of the provisions of this Act (other than for the purpose of giving evidence) that the said person is a child, the Committee or the Board shall record such observation stating the age of the child as nearly as may be and proceed with the inquiry under section 14 or section 36, as the case may be, without waiting for further confirmation of the age.
2. In case, the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination, by seeking evidence by obtaining —
 - i. the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;
 - ii. the birth certificate given by a corporation or a municipal authority or a panchayat;
 - iii. and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board:

Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order.

3. The age recorded by the Committee or the Board to be the age of person so brought before it shall, for the purpose of this Act, be deemed to be the true age of that person.

9. In such view of the matter, there is total non application of mind by the learned Sessions Judge, Nawada as well as by the Juvenile Justice Board, Nawada, as the offence comes under the purview of heinous offence as defined under Section 2(33) of the Act. Hence, the order of both the courts below does not appear to be sustainable in the eye of law, as the Juvenile Justice Board has



to pass an order under Section 15 of the Act after assessment of mental and physical condition of the accused and, thereafter, has to pass an order under Section 18(3) of the Act but those provisions have not been followed.

14. Accordingly, the order dated 21.08.2018 passed by the 1st Additional Sessions Judge cum Special Judge POCSO, Nawada as well as the order 6.6.2018 passed by the Juvenile Justice Board, Nawada is set aside. The matter is remitted back to the Juvenile Justice Board for determination of the age of the petitioner and if he is found above sixteen years, then, after following the provisions contained in Section 15 and 18(3) of the Act pass an appropriate order and while considering the prayer for bail of the petitioner, the court below shall also take into note that earlier the petitioner was granted bail by a coordinate Bench of this Court with certain conditions.

15. With the aforesaid observation, this application is disposed of.

(Vinod Kumar Sinha, J)

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