

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.3934 of 2018

Arising Out of PS.Case No. -206 Year- 2018 Thana -KHAGARIA District- KHAGARIA

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Sandeep Kumar @ Sandeep Yadav @ Sanjeev Yadav son of Chandradeo Yadav, resident of village- Barkhandi Tola, P.S.-Khagaria (Muffasil), District- Khagaria through her mother Nirmala Devi wife of Chandradeo Yadav, resident of village- Barkhandi Tola, P.S.-Khagaria (M), District- Khagaria.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Arun Kumar Gupta, Advocate

: Mr. Binod Kumar, Advocate

For the Respondent/s : Mr. Abhimanyu Sharma, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date: 26-10-2018

This appeal is directed against the order dated 22.06.2018 passed by the learned 1st Additional Sessions Judge-cum-Special Judge, Khagaria in Juvenile Trial No.01 of 2018 arising out of Khagaria (Mufassil) P.S. Case No.206 of 2018 registered for the offences punishable under Sections 302 and 448 of the Indian Penal Code and Section 27 of the Arms Act whereby prayer for bail of the appellant has been rejected.

2. It is submitted by the learned counsel for the appellant that though the appellant has been declared juvenile in conflict with law and his case has been referred by the Juvenile Justice Board after preliminary assessment with regard to mental and physical capacity to commit offence, ability to understand the



consequences of the offence and the circumstances in which he has allegedly committed the offence, the Children's Court without looking to the provisions of Section 19 of the Juvenile Justice (Care and Protection of Children) Act, 2015 has mechanically rejected the prayer for bail of the appellant.

3. On the other hand, learned counsel for the State submitted that the offence alleged is 'heinous' in nature. Hence, the Children's Court committed no illegality in rejecting the prayer for bail of the appellant.

4. I have heard learned counsel for the parties and carefully perused the record.

5. Section 19 of the Juvenile Justice (Care and Protection of Children) Act, 2015 provides as under:-

19. Powers of Children's Court.- (1) after receipt of preliminary assessment from the Board under Section 15, the Children's Court may decide that-

(i) there is a need for trial of the child as an adult as per the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) and pass appropriate orders after trial subject to the provisions of this section and Section 21, considering the special needs of the child, the tenets of fair trial and maintaining a child



friendly atmosphere;

(ii) there is no need for trial of the child as an adult and may conduct an inquiry as a Board and pass appropriate orders in accordance with the provisions of Section 18.

(2) The Children's Court shall ensure that the final order, with regard to a child in conflict with law, shall include an individual care plan for the rehabilitation of child, including follow up by the probation officer or the District Child Protection Unit or a social worker.

(3) The Children's Court shall ensure that the child who is found to be in conflict with law is sent to a place of safety till he attains the age of twenty-one years and thereafter, the person shall be transferred to a jail:

Provided that the reformatory services including educational services, skill development, alternative therapy such as counseling, behaviour modification therapy, and psychiatric support shall be provided to the child during the period of his stay in the place of safety.

(4) The Children's Court shall ensure that there is a periodic follow up report every year by the probation officer or the District



Child Protection Unit or a social worker, as required, to evaluate the progress of the child in the place of safety and to ensure that there is no ill-treatment to the child in any form.

(5) The reports under sub-section (4) shall be forwarded to the Children's Court for record and follow up, as may be required.

6. Apparently, after going through the record of the case, it would appear that after receiving the preliminary assessment from the Juvenile Justice Board under Section 15 of the Children's Court has not decided that there is need for trial of the child as an adult as per the provisions of the Code of Criminal Procedure and has mechanically rejected the prayer for bail considering the gravity of the offence.

7. In that view of the matter, the impugned order passed by the court below dated 22.06.2018 cannot be sustained and it is set aside accordingly. The matter is remitted to the Children's Court to re-hear the parties afresh and pass appropriate orders after complying with the mandatory requirements of Section 19(1)(i) and (ii) of the Juvenile Justice (Care and Protection of Children) Act, 2015. It is made clear that this Court has not considered the prayer for bail of the appellant on merits. Hence, the Children's Court would be



at liberty to pass order afresh considering the merits of the case in
accordance with law.

8. The appeal stands allowed to the extent indicated
above.

(Ashwani Kumar Singh, J)

Md.S./-

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