

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.929 of 2018

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1. Aurangjeb Alam @ Aurangjeb, Son of Sheikh Samsur @ Samsul Haque,
Resident of Village- Ajgarhwa, P.O.- Khairy, P.S.- Banjariya, District- East
Champaran, Motihari through his father Sheikh Samsur @ Samsul Haque.

.... Petitioner

Versus

1. The State of Bihar.

.... Respondent

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Appearance :

For the Petitioner/s : Mr. Sharda Nand Mishra

For the Respondent/s : Mr. Sri Matloob Rab

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

2 10-10-2018

This revision application has been preferred against the judgment dated 4.7.2018 passed by the 1st Addl. Sessions Judge, East Champaran, Motihari in Cr. Appeal No.25 of 2018, by which the prayer for bail of the petitioner was rejected and the order of the Juvenile Justice Board, (hereinafter to be referred as '*the J.J.B.*' in short) dated 21.3.2018 passed in Turkauliya (Banjaria) P.S.case no.444 of 2017 has been affirmed.

On perusal of the record, it appears that there is allegation against the petitioner of committing rape upon the informant on the pretext of marrying her, she became pregnant and the petitioner refused to marry with her. The petitioner is named in the FIR and later on he was arrested and thereafter he prayed for determination of his age as he claims to be juvenile and



he was found to be aged about 16 ½ years, vide order dated 22.2.2018 passed by the J.J.B., Motihari. Later on the petitioner prayed for bail before the J.J.B. which was rejected vide order dated 22.2.2018. Against which he has preferred appeal before the Sessions Judge and in the Criminal Appeal No. No.25 of 2018, his prayer for bail was also rejected and the order of the J.J.B. was affirmed.

It appears from perusal of the record that the age of the juvenile petitioner was assessed more than 16 years and he has been made accused for offences under Section 302 of the IPC as well as other Sections of the IPC.

Section 2(33) of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter to be referred as '*the Act*') defines "Heinous Offences", which is as follows :

"Heinous Offences" includes the offences for which the minimum punishment under the Indian Penal Code or any other law for the time being in force is imprisonment for seven years or more.

From the above definition, it appears that the Juvenile petitioner has been made accused of heinous offences.

It further appears that Section 14 (5) of the Act provides an enquiry by the Board regarding child in conflict with law and Section 14 (5)(f) of the Act deals with enquiry of heinous



offences by J.J.B., which is as follows :

“(i) for child below the age of sixteen years as on the date of commission of an offence shall be disposed of by the Board under clause (e);

(ii) for child above the age of sixteen years as on the date of commission of an offence shall be dealt with in the manner prescribed under section 15.

Further, Section 15 (1) of the Act provides for preliminary assessment into offences by Board as follows : -

“15. (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 subsection (3) of section 18.”

Further Section 18(3) of the Act provides as follows : -

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

On plain reading of the aforesaid provisions, it appears that when a juvenile has come before the J.J.B. for heinous offences, he has to make enquiry regarding mental and



physical capacity to commit such offences and ability to understand the consequences of the offences and may pass order in accordance with provisions of Sub Section 3 of Section 18 of the Act for the trial of the child in conflict with law as an adult and then the Board may transfer the trial of the case to the children court having jurisdiction to try such offences.

The aforesaid provisions appears to be mandatory in nature and has to be complied with by the J.J.B. before passing an order on the bail petition of the child in conflict with law but the aforesaid mandatory provision has not been complied with and there is no order under Section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2015 with regard to assessment of the mental and physical capacity to understand the consequences nor there is any order with regard to trial of the petitioner as an adult by the children court before passing an order on bail petition.

In such view of the matter, the impugned order dated 4.7.2018 of appellate court and order dated 21.3.2018 of the J.J.B. do not appear to be sustainable in the eye of law, as such the impugned judgment of the appellate court as well as impugned order of the J.J.B. are set aside. The case of the petitioner is remitted back to the JJ.B. before passing any order on bail for



passing order under Section 15 of the Act as well as under Section 18 (3) of the Act preferably within a period of 60 days from the date of receipt of the order.

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

(Vinod Kumar Sinha, J)

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