

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.118 of 2018

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Chandan Kumar, son of Late Punit Mahto, Resident of
Village- Ratan, P.S.- Bakhari, District- Begusarai, through
his brother adlitem namely Mintu Kumar.

.... Petitioner/s

Versus

The State of Bihar.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sabal Kumar Jha

For the Respondent/s : Mr. Sri Ram Naresh Ray

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL ORDER

4 08-05-2018 The juvenile/petitioner was more than 16 years on the date of the occurrence for which a case has been instituted vide Bakhari P.S. Case No. 98 of 2017 for the offences under Sections 302, 120B, 34 of the Indian Penal Code and Section 27 of the Arms Act.

From the perusal of the order of the Juvenile Justice Board as also the appellate order passed by the learned District & Sessions Judge, Begusarai in Cr. Appeal No. 112 of 2017, it appears that there has not been any assessment of the juvenile/petitioner in terms of Section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2015. Section 15 of the Act, referred to above, reads as follows:-

"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.

Explanation-For the purposes of this section, it is clarified that preliminary assessment is not a trial, but is to assess the capacity of such child to commit and understand the consequences of the alleged offence.

(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."

Since the offence of Section 302 I.P.C would come within the category of heinous cases as defined under Section 2 (33) of the Juvenile Justice (Care and Protection of Children) Act, 2015, the assessment under Section 15 of the Act is mandatory. That not having been done by the Juvenile Justice Board as well as the Appellate Court, their orders



cannot be sustained in the eyes of law.

Accordingly, the order dated 07.11.2017 passed by the Juvenile Justice Board, Begusarai in J.J.B. No. 73 of 2017, arising out of Bakhri P.S. Case No. 98 of 2017 as also the appellate order passed by the learned District & Sessions Judge, Begusarai in Cr. Appeal No. 112 of 2017 are set aside.

The case is remitted back to the learned Juvenile Justice Board, Begusarai for assessment of the petitioner in terms of Section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2015.

In case the petitioner feels aggrieved by the order of the Juvenile Justice Board, he shall have the liberty to challenge the aforesaid order before the competent Court.

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

(Ashutosh Kumar, J)

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