

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.861 of 2018

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1. Jeemee Kumar Singh @ Ankit Kumar Singh S/o Krishna Singh, R/o Bangara, P.S.- Mahrajganj, District- Siwan under the guardianship of father, Krishna Singh, son of Late Bichari Singh.

.... Petitioner

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Petitioner/s : Mr. Arvind Kumar Mouar

For the Respondent/s : Mr. Ram Anurag Singh

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

3 10-10-2018 This revision application has been filed against the judgment dated 25.5.2018 passed by 1st Additional District and Sessions Judge, Siwan in Cr.Appeal No. 33 of 2018 as well as the order dated 9.5.2018 passed by Juvenile Justice Board, Siwan in Juvenile Trial No. 73 of 2018, arising out of G.R.No. 88 of 2018, Siwan Mahila P.S.Case No. 1 of 2018, whereby and whereunder prayer for bail of the petitioner has been rejected.

Allegation against the petitioner is of committing rape upon the prosecutrix and on that basis Siwan Mahila P.S.Case No. 01 of 2018 was registered under Sections 376(D) and 342 of the Indian Penal Code and the offence is heinous in nature.

The petitioner was declared juvenile by the Juvenile Justice Board (hereinafter to be referred as 'the JJB') and found him aged 17 years 10 months 27 days at the time of occurrence on an enquiry under Section 14 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter to be referred as



‘the Act’) and offence under Section 376 IPC comes under definition of ‘Heinous Offence’. ‘Heinous Offence’ has been defined under Section 2(33) of the Act, which provides as follows:

“2(33) “heinous offence” includes the offences for which the minimum punishment under the Indian Penal Code (45 of 1860) or any other law for the time being in force is imprisonment for seven years or more.”

Section 14(5)(f) of the Act provides as follows :

“inquiry of heinous offence,-

(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.”

Section 14 of the Act relates to inquiry by Board regarding child in conflict with law.

Further Section 15 of the Act provides as follows :

“S.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 of psycho-social



workers or other experts.”

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 an adult, then the Board may order transfer of the trial to the case to the Children’s Court having jurisdiction to try such offences.”

On a plain reading of the aforesaid provisions of the Act it appears that a child in conflict with law aged more than 16 years is an accused in heinous offence as in the present case the JJB has to conduct a preliminary assessment in terms of Section 15 of the Act regarding ‘Preliminary assessment into heinous offences’ and then pass an order under Section 18(3) of the Act that there is a need for trial of the said child as an adult but in the present case neither an order under Section 15 of the Act has been passed with regard to preliminary assessment of the juvenile petitioner with regard to his mental and physical capacity to commit such offence, ability to understand and consequences of the offence and the circumstances in which he allegedly committed the offence nor an order under Section 18(3) of the Act has been passed, though the juvenile petitioner is aged more than 16 years and is an accused for the heinous offence, before passing an order on bail petition.

In such view of the matter, the impugned judgment dated 25.5.2018 passed by 1st Additional District and Sessions Judge, Siwan in Cr.Appeal No. 33 of 2018 as well as the impugned order



dated 9.5.2018 passed by the JJB, Siwan in Juvenile Trial No. 73 of 2018 cannot sustain. Hence they are set aside.

The matter is remitted back to the JJB, prior to consider bail of the petitioner, for passing an order under Section 15 of the Act as it is a mandatory provision and also for passing an order under Section 18(3) of the Act within a period of 60 days from the receipt of copy of this order.

Needless to say that if the petitioner is aggrieved by the order of the JJB he may move before an appropriate court as provided under the provisions of the Act.

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

(Vinod Kumar Sinha, J)

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