

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.878 of 2018

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1. Dabloo Kumar S/o Indal Rai, R/o Vill.- Bahurar, P.S.- Nanpur, District- Sitamarhi, under Guardianship of his Father Indal Rai S/o Subh Lal Rai, R/o Vill.- Bahurar, P.S.- Nanpur, District- Sitamarhi.

.... Petitioner/s

Versus

1. The State of Bihar

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

2 10-10-2018 This revision application is preferred against the judgment dated 26.6.2018 passed by the Addl. Sessions Judge cum Special Judge, Children Court, Sitamarhi in Cr. Appeal No.19 of 2018/10 of 2018 by which he has rejected the prayer for bail of the petitioner, affirming the order of the Juvenile Justice Board (hereinafter referred as 'the J.J.B.') dated 16.5.2018 passed in Nanpur P.S.Case No.421 of 2017 (J.J.B. Case No.1229 of 2018).

The prosecution case in short is that the son of the informant had gone out for purchase of *Singhara* and he did not return and thereafter on 18.12.2017 the informant heard *hulla* that a dead-body has been found in Janipur Baghar and the informant and the other villagers went there and he found the dead body as his son. Later on he suspected that the accused Amaresh Kumar



and his cousin Bhagina Dabloo Kumar have killed his son and the petitioner was named in the FIR.

During the pendency of this application, the petitioner has claimed himself to be juvenile, and the J.J.B. has found the petitioner aged about 16 years, 04 months and 01 day, vide order dated 10.4.2018 passed by the J.J.B., Sitamarhi.

The petitioner thereafter prayed for bail before the J.J.B and his prayer for bail was rejected by the learned J.J.B vide order dated 16.5.2018 passed in 1534 of 2018 Nanpur P.S. case NO.421 OF 2017, J.J.B. No.1229 of 2018, against which the petitioner has preferred appeal before the Sessions Judge and his Cr. Appeal No.19 of 2018 /10 of 2018 was dismissed by the learned appellate court vide judgment dated 26.6.2018.

Being aggrieved by the same, the juvenile petitioner has preferred this revision application before this Court for setting aside the impugned judgment of the appellate court as well as the impugned order of the J.J.B.; by which his prayer for bail has been rejected.

However, what appears from perusal of the record that the J.J.B., Sitamarhi, vide order dated 10.4.2018 has found the petitioner aged about 16 years, 04 months and 01 days and the allegation against the petitioner is of commission of murder under



Section 302 of the IPC and other Sections of the IPC.

As per the Juvenile Justice Board (Care and Protection) Act, 2015 (hereinafter to be referred as '*the Act*'), Section 2(33) of the Act provides 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.

As such the offences under which the petitioner has been made accused under the heinous offences.

Further Section 14 (5) of the Act provides for an enquiry by Board regarding child in conflict with law and Section 14 (5)(f) of the Act provides enquiry of heinous offences, 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 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.”

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 once the child above the age of 16 years is found accused in a case of heinous offences, the J.J.B. has to pass an order under Section 15 of the Act regarding preliminary assessment with regard to his mental and physical condition to commit such offences and ability to understand the consequences of the offence and circumstances under which he has allegedly committed offences and further he may pass an order in accordance with the provisions of Sub Section 3 of Section 18 of the Act, however, in the present case, provision of Section 15 of the Act has not been complied, which is mandatory in nature and



even no order has been passed under Section 18 (3) of the Act before passing the order on bail petition.

In the result, the impugned judgment dated 26.6.2018 passed by the appellate court and the impugned order dated 16.5.2018 passed by the J.J.B. can not be sustained, hence, they are set aside. The case of the juvenile petitioner is remitted back to the J.J.B. for passing an order under Section 15 of the Act and also may pass order under Section 18 (3) of the Act before passing order on the bail petition of the juvenile petitioner.

It is made clear that the J.J.B. will pass appropriate order within a period of 60 days from the date of receipt of the order.

With the aforesaid modification, this criminal application is allowed.

(Vinod Kumar Sinha, J)

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