

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No. 725 of 2017

Arising Out of PS.Case No. -null Year- null Thana -null District- VAISHALI(HAJIPUR)

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Ajay Kumar @ Ajay Kumar Ray, S/o Police Ray, R/o Village - Dagru, P.S. - Mahua, District - Vaishali.

.... Petitioner

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Petitioner : Mr. Dharmendra Kumar Paswan, Adv.

For the Respondent : Mr. Chandra Bhushan Prasad, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date: 28-03-2018

Heard learned counsel for the parties.

2. This criminal revision has been preferred under Section 102 of the Juvenile Justice (Care and Protection of Children) Act, 2015 against refusal of prayer for regular bail by the learned lower appellate court in exercise of power under Section 101 of the Act passed on 25.05.2017 in Cr. Appeal No. 41 of 2017 in connection with Mahua P.S. Case No. 218 of 2015 whereby the learned lower appellate court refused to interfere with the order of refusal of prayer for bail passed on 13.03.2017 by the Juvenile Justice Board, Vaishali at Hajipur in the aforesaid case. The FIR was registered under Sections 341, 342, 323, 307, 376, 377 of the Indian Penal Code as well as Sections 4, 6, 8, 10 and 18 of the Protection of Children from Sexual Offenses Act, 2012.

3. The petitioner Ajay Kumar @ Ajay Kumar Ray, son of Police Ray is an accused in connection with Mahua P.S. Case No. 218 of 2015



aforesaid having allegation that rape was committed against 8 years old daughter of the informant. The informant disclosed in the FIR that when he reached at the hospital where victim was being treated, the victim disclosed that son of Sudhir Rai had committed rape against her. Consequently, Nitish Kumar, son of Sudhir Rai was apprehended by the police and remanded to judicial custody. The occurrence, allegedly, took place on 03.05.2015. Thereafter, statement of the victim-girl was recorded under Section 164 Cr.P.C. on 23.05.2015, wherein she disclosed that the petitioner had induced her to go with her and entire alleged crime was committed by this petitioner. Thereafter, the informant entered into a compromise with Nitish Kumar stating in the compromise petition that in fact real culprit was this petitioner. However, the witnesses before the police stated that Nitish Kumar was the real culprit. When the petitioner was roped in this case, he approached before the Juvenile Justice Board, Vaishali at Hajipur and by order dated 17.02.2017 passed in G.R. No. 2078 of 2015, the Juvenile Justice Board declared the petitioner as juvenile. The order attained finality. Thereafter, on 03.03.2017, the learned Juvenile Justice Board refused the prayer for bail considering the seriousness of the allegation against the petitioner in the statement of the victim under Section 164 Cr.P.C. The petitioner preferred appeal before the learned Sessions Judge, Vaishali vide Cr. Appeal No. 41 of 2017 and by the impugned order dated 25.05.2017, the



learned Sessions Judge dismissed the appeal and refused to grant bail to the petitioner. Hence, this revision application.

4. Submission of the learned counsel for the petitioner is that the impugned order suffers from irregularity and error of record as the learned District Judge has not considered that the petitioner is a juvenile and seriousness of the allegation was no ground for detaining the petitioner in prison. Moreover, the same victim had given conflicting statement before the informant naming some other person and thereafter before the Magistrate under Section 164 Cr.P.C. ropping the petitioner.

5. Section 12 of the Juvenile Justice Act provides for grant of bail to a person who is apparently a child alleged to be in conflict with act. The provision reads as follows:-

“12. Bail to a person who is apparently a child alleged to be in conflict with law. – (1) When any person, who is apparently a child and is alleged to have committed a bailable or non-bailable offence, is apprehended or detained by the police or appears or brought before a Board, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, be released on bail with or without surety or placed under the supervision of a probation officer or under the care of any fit person:

Provided that such person shall not be so released if there appears reasonable grounds for believing that the release is likely to bring that person into association with any known criminal or expose the said person to moral,



physical or psychological danger or the person's release would defeat the ends of justice, and the Board shall record the reasons for denying the bail and circumstances that led to such a decision.

(2) When such person having been apprehended is not released on bail under sub-section (1) by the officer-in-charge of the police station, such officer shall cause the person to be kept only in an observation home in such manner as may be prescribed until the person can be brought before a Board.

(3) When such person is not released on bail under sub-section (1) by the Board, it shall make an order sending him to an observation home or a place of safety, as the case may be, for such period during the pendency of the inquiry regarding the person, as may be specified in the order.

(4) When a child in conflict with law is unable to fulfil the conditions of bail order within seven days of the bail order, such child shall be produced before the Board for modification of the conditions of bail."

6. A bare perusal of the aforesaid provision and the impugned order, it does not appear that the learned appellate court has considered as to why the petitioner, who is a juvenile, does not deserve bail only for the seriousness and gravity of the allegation which is not only against the petitioner but also against another co-accused against whom the allegation was withdrawn by the victim and compromise has been entered into. The grounds for refusal of the bail as mentioned in Section 12 of the Juvenile Justice Act above has not been taken into consideration by the learned lower appellate court.

7. Considering the entire facts aforesaid, in my view, the petitioner



deserves bail. Hence, the impugned order is set aside and it is directed that the petitioner be released on bail on execution of surety bond, to the satisfaction of the Juvenile Justice Board, executed by either of the parents of the petitioner giving undertaking that he/she shall produce, the petitioner, as and when required, before the Juvenile Justice Board during enquiry and shall fully assist in the inquiry before the proceeding.

(Birendra Kumar, J)

Kundan/-

AFR/NAFR	NAFR
CAV DATE	N.A.
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