

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.212 of 2018

Arising Out of PS. Case No.-82 Year-2017 Thana- RAFIGANJ District- Aurangabad

Nitish Kumar, Son of Rajendra Yadav, Resident of Village- Naiki, P.S.-
Rafiganj, Dist- Aurangabad.

... .. Petitioner

Versus

The State of Bihar.

... .. Respondent

Appearance :

For the Petitioner/s : Mr. S. Jamil Akhtar
For the Respondent/s : Mr. Sri Sanjay Kumar Tiwary

CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

3 06-12-2018 This revision application is directed against the judgment dated 4.1.2018 passed by 1st Additional Sessions Judge, Aurangabad in Cr.Appeal No. 71 of 2017, whereby and whereunder the learned Additional Sessions Judge has dismissed the appeal filed by the petitioner affirming the order of Juvenile Justice Board (in short 'JJB') dated 23.9.2017 by which the prayer for bail of the petitioner has been rejected.

Prosecution case as per fardbeyan is that 7 years old son Akhilesh Yadav was found missing as there was land dispute between the parties from before and as such they have suspected the hand of the petitioner and his family members in crime and thereafter dead body of the boy was recovered.

On the basis of aforesaid farebeyan Rafiganj P.S.Case No. 82 of 2017 under Sections 364 and 302/34 IPC has been



registered. After arrest the petitioner claims himself to be a juvenile and inquiry for determination of the age of the petitioner has been conducted in which he has been found 17 years 6 months and 22 days, which appears from Annexure-2. Thereafter petitioner has prayed for bail before the JJB which has been rejected, against which an appeal has been preferred before the learned 1st Additional Sessions Judge, which has also been dismissed vide judgment dated 4.1.2018.

Being aggrieved by the same, the present revision application has been filed on the ground that no specific allegation has been attributed against the petitioner and the entire family members of the petitioners have been made accused in this case as there is family land dispute between the parties from before. Further submission of learned counsel for the petitioner is that both the learned JJB and the appellate court failed to appreciate the provisions of Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (in short '2015 Act') and dismissed the prayer for bail of the petitioner only on the basis of gravity of the offences, whereas petitioner is in custody since 13.5.2017 and other co-accused persons, i.e., father and mother of the petitioner, have been allowed bail by a co-ordinate Bench of this Court vide order dated 6.12.2017



passed in Cr.Misc.No. 54554 of 2017.

Heard learned counsel for the State, who has justified the judgment of appellate court as well as order of JJB.

Having heard both sides and on perusal of record it appears that age of the petitioner has been assessed at 17 years and more, i.e., more than 16 years and offence under Section 302 IPC comes under the definition of heinous offence. However, both the appellate court and JJB have failed to consider as per provisions of Section 12 of 2015 Act that a juvenile in conflict with law is entitled to be released on bail unless there is chance of his exposure to moral, physical or psychological danger or the person's release would defeat the ends of justice. Prayer for bail of the petitioner has also been rejected by the appellate court while considering the provisions of Section 12 of 2015 Act on the ground that if he is granted bail that would defeat the ends of justice but there is no social investigation report and other report available on record and he has been made accused on suspicion.

In the facts and circumstances, as stated above, this revision application is allowed. The impugned judgment of appellate court and order of JJB are set aside.

Let the petitioner, above named, be released on bail



on furnishing bail bond of Rs.10,000/- (Rupees ten thousand) with two sureties of the like amount each to the satisfaction of Juvenile Justice Board, Aurangabad, in connection with Ragiganj P.S.Case No. 82 of 2017, subject to the condition that one of the bailors shall be his parent and further condition is that petitioner will be under the supervision of Probationary Officer and if anything adverse is found against the petitioner, prosecution will be at liberty to move for cancellation of his bail bond.

(Vinod Kumar Sinha, J)

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