

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.143 of 2018

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Dhirendra Kumar @ Pankaj Kumar, S/o Kamlesh Singh,
R/v- Sirbit, P.S.- Chainpur, Distt.- Kaimur, under the
Guardianship of his natural grandfather, namely, Rajendra
Singh, S/o Late Ram Swaroop Singh, R/v- Sirbit, P.S.-
Chainpur, Distt.- Kaimur.

.... Petitioner/s

Versus

The State of Bihar.

.... Opposite Party/s

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Appearance :

For the Petitioner/s :Mr. Ravi Shankar Sahay, Adv.

For the State :Dr. Mrityunjaya Kr. Gautam, APP

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL ORDER

7 16-08-2018 The petitioner, a juvenile, has been made
accused in connection Bhabhua P.S. Case No. 440 of 2017,
dated 21.07.2017, instituted for the offences under
Section 302/34 of the Indian Penal Code and Section 27 of
the Arms Act.

The Juvenile Justice Board, Kaimur at Bhabhua
(*in short the Board*) has assessed the age of the petitioner
to be more than 16 years, but less than 18 years of age on
the date of the occurrence. The Board, thereafter,
transferred the case of the petitioner to the Child Court



and refused to release him from the remand home on the ground that he is an accused in a case of murder, which is a heinous offence as defined under Section 2(33) of the Juvenile Justice (Care and Protection of Children Act, 2015 (*in short the Act*) and he is aged more than 16 years.

The learned Child Court *vide* order dated 15.11.2017 has refused to direct for the release of the petitioner from the remand home/place of safety on the ground that the case of the juvenile/petitioner is being dealt with in terms of Section 18(3) of the Act.

Mr. Ravi Shankar Sahay, learned Advocate appearing for the juvenile/petitioner has argued that under the provisions of Section 14(3) read with Section 15 of the Act, the case of the petitioner was transmitted to the Child Court because of the nature of the offence and his age. However, the Child Court misconstrued the provision of law in holding that a juvenile in conflict with law cannot be directed to be released from the remand home/place of safety if his/her case is being considered under Section 18(3) of the Act.

Section 18(3) of the Act enjoins that if the Board, after preliminary assessment of a juvenile under Section 15 of the Act, passes an order that there is a need for trial of the child as an adult, it may transfer the trial of



the case of the concerned juvenile to the Child Court having jurisdiction to try such offence. No where does Section 18(3) of the Act prevent or prohibit any Child Court from passing any order of release.

Mr. Sahay, learned Advocate, has further drawn the attention of this Court to the provisions of Section 19 of the Act which lists the options to the Child Court in dealing with a juvenile who is more than 16 years and less than 18 years of age at the time of commission of the crime, which is a heinous offence. If the Child Court is of the view that there is a need for trial of a child as an adult, as per the provisions of Cr.P.C., necessary/appropriate orders could be passed after trial in terms of Sections 19 and 21 of the Act, taking into account the special needs of the Child, the tenets of fair trial and maintaining a child at friendly atmosphere. If the Child Court is of the opinion that there is no need for trial of the child as an adult, the enquiry may be conducted as if it is being conducted by the Board and necessary/appropriate orders could be passed.

Thus, from the composite reading of Sections 14, 15, 18 and 19 of the Act, there does not appear to be any proscription for not releasing a juvenile in conflict with law from the Remand Home, merely on the ground that he



is being tried as an adult before the Child Court.

It has further been submitted that the case of such juvenile would surely be treated in a different manner and exact application of the provision of Section 12 of the Act may not be insisted for; nonetheless the basic consideration regarding possibility of the juvenile in conflict with law, falling in bad company in case of his release, has to be taken into account.

The report of the Probation Officer or the Social Investigation Report may not be disclosed/discussed in its entirety, but it ought to be considered for taking a decision regarding the release of the juvenile in conflict with law, pending his trial. The mandate of law is that at all stages, the special needs of the child, the tenets of fair trial and a child friendly atmosphere has to be maintained.

From the perusal of the order impugned, it appears that no consideration has been made by the Child Court regarding the aforesaid factors and the prayer has been refused merely on the ground that the case has been transferred to the Child Court for trial and disposal.

So far as the merits of the case are concerned, Mr. Sahay, learned Advocate, has submitted that the father of the deceased, at the time of lodging of the F.I.R., had suspicion against nobody in particular. Since the



father of the deceased was of the view that the deceased had fought with some young boys of a particular caste, the possibility of his having been killed at their hands could not have been ruled out. It was only later, during the course of the investigation, it came to light that the deceased was likely to be married to a girl whom the juvenile/petitioner loved and wanted to marry and therefore he killed the deceased. This information was derived only through the confession of the juvenile/petitioner and no other extraneous/relevant source. It was, thus, argued that, but for the confession of a juvenile, there was no material against him for being put on trial for the offence of murder.

Be that as it may, this Court does not find anything on record to indicate that the release of the juvenile/petitioner from the observation home or place of safety would make the juvenile fall in bad company, which may not be good for his future prospects.

Regard being had to the aforesaid facts, especially the period for which the juvenile/petitioner has remained in the place of safety, the nature of material collected against him and there being no material to hold that the petitioner had fallen in bad company prior to his being made accused in this case, this Court only deems it



appropriate to direct for his release from the Remand Home/place of safety.

The petitioner/juvenile, above named, is directed to be released from the remand home on his furnishing bail bond in the sum of Rs. 10,000/- (Rupees Ten Thousand) with two sureties of the like amount each to the satisfaction of the learned 1st Addl. Sessions Judge-Cum-Special Judge, Kaimur at Bhabhua, in connection with Children Trial No. 11 of 2017, arising out of Bhabhua P.S. Case No. 440 of 2017.

One of the bailors shall be the mother of the juvenile/petitioner, who, at the time of filing of the bonds, shall give an undertaking that she will take good care of the juvenile/petitioner and in case the juvenile/petitioner avoids paying heed to her advice, she would report the matter forthwith to the Officer-In-Charge of the concerned police station.

This revision petition, accordingly, stands allowed.

(Ashutosh Kumar, J)

Praveen-II/-

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