

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.132 of 2018

Arising Out of PS. Case No.-97 Year-2016 Thana- PATNA CITY CHOWK District- Patna

Vivek Patel @ Vivek Raj, Son of Rajesh Kumar Patel @ Rajesh Prasad,
Resident of Village- Kaimasikoh, Police Station Chauk Patna City, District-
Patna.

... .. Petitioner/s

Versus

The State of Bihar.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Ajay Mishra

For the Respondent/s : Mr. Sri Shyameshwar Dayal

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL ORDER

4 02-04-2018

The petitioner/juvenile was assessed to be more than 16 years of age on the date of the occurrence, by the Juvenile Justice Board, Patna.

The petitioner has been made accused in connection with Chowk P.S. Case No. 97 of 2016 instituted for the offence under Sections 302/34 of the Indian Penal Code and Section 27 of the Arms Act.

Since the offence of murder for which the petitioner/juvenile has been charged, falls in the category of heinous cases as defined under Section 2 (33) of the Juvenile Justice (Care and Protection of the Children) Act, 2015 (hereinafter referred to as the 'Act'), the case of the petitioner was mandatorily



required to be assessed in terms of Section 15 of the Act aforesaid.

From the perusal of the order passed by the Juvenile Justice Board, Patna as also the appellate order dated 07.12.2017, it appears that no such assessment of the juvenile has been made by the either of the courts.

Section 15 of the Act is extracted below for the sake of completeness

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 or psycho-social workers or other experts.*

(2) *Where the Board is satisfied on preliminary assessment that the matter should be disposed of by the Board, then the Board shall follow the procedure, as far as may be, for trial in summons case under the code of Criminal Procedure, 1973 (2 of 1974);*

Provided that the order of the Board to dispose of the matter shall be appealable under sub-section (2) of section 101.



Provided further that the assessment under this section shall be completed within the period specified in section 14.

(Emphasis supplied.)

For the non-assessment of the petitioner in terms of Section 15 of the Act, both the orders are not fit to be sustained in the eyes of law and are, therefore, set aside.

The case of the petitioner is remitted to the court of the Juvenile Justice Board, Patna for assessing the age of the petitioner in terms of Section 15 of the Act referred to above. The assessment shall be done without any delay after noticing the parties. Should the petitioner/juvenile feel aggrieved by any order passed by the Juvenile Justice Board, Patna he shall have the liberty to avail of his remedies which are available to him under law.

In the meantime, if the trial of the petitioner has started as a juvenile, that shall remain stayed, which shall be subject to the order passed by the Juvenile Justice Board, Patna.

(Ashutosh Kumar, J)

krishna/-

U		T	
---	--	---	--

