

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.1147 of 2018

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1. Rahul Kumar S/o Naresh Prasad, R/o Vill.- Nakatpura, P.S.- Bihar,
District- Nalanda Minor Son, through- Under natural guardianship of his
father Namely Naresh Prasad S/o Somar Prasad, R/o Vill.- Nakatpura, P.S.-
Bihar, District- Nalanda.

.... Petitioner/s

Versus

1. The State of Bihar

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Raj Kishor Prasad, Adv.

For the Respondent/s : Smt. Meena Singh, APP

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

3 11-10-2018 This revision application is being preferred against the order dated 23.08.2018 passed by 1st Additional Sessions Judge cum Special Judge, Nalanda in Juvenile Appeal No. 05/2018, rejecting the prayer for bail of the petitioner preferred against order dated 02.08.2018 passed by the Juvenile Justice Board, Patna in J.J.B. Case No. 289/2018 in connection with G.R. Case No. 1755/2018 registered for offences punishable under Sections 302/34 of the Indian Penal Code, whereby the prayer for release of the petitioner on bail was rejected.

2. Case of the prosecution in short is that on 16.05.2018 at about 11 A.M., wife of the informant, namely, Madhuri Devi left the house telling that she was going to Nepura but did not return till the evening. Informant searched her but she could not be found



and, thereafter, on 17.05.2018, her dead body was recovered.

3. Submission of learned counsel for the revisionist- petitioner is that he is not named in the F.I.R, his name has surfaced on the confession of co-accused Rohit Kumar and except that there is nothing against the petitioner and he has no role to play in the death of the wife of informant and further there is no recovery from the possession of the petitioner.

4. Petitioner claimed himself to be juvenile and his age as per his matriculation certificate was assessed to be 16 years 03 months and 14 days by the Juvenile Justice Board, Patna vide order dated 07.07.2018.

5. It appears that the Juvenile Justice Board, Patna has rejected the prayer for bail of the petitioner on the ground that the petitioner was more than sixteen years of age at the time of commission of offence and he was well aware with the nature and consequence of offence. Against the said order of Juvenile Justice Board, Patna, petitioner preferred Juvenile Appeal No. 05/18 and the same was also dismissed by the 1st Additional Sessions Judge cum Special Judge, Nalanda vide order dated 23.08.2018 with observation that if the juvenile/appellant is released on bail, there is reasonable apprehension of exposing him to moral, physical or psychological danger and it would also defeat the ends of justice.



The report of Probation Officer also supports the fact that the appellant is required extensive counseling and ethical education and training and such thing can be possible only in remand home and not in the open society.

6. Being aggrieved, the petitioner has preferred the instant revision application before this Court.

7. It appears from perusal of the order that there is no enquiry report of Juvenile Justice Board as per the provisions contained in Section 14 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as the 'Act') and further there is no preliminary assessment report of the petitioner about his mental and physical capacity to commit the offence and has the ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence, as the petitioner's age has been assessed to be more than sixteen years as has been provided under sections 15 and 18(3) of the Act.

8. It also appears that the provisions of Section 14(f) (ii) and Section 15 of the Act have also not been complied with and there is no order under Section 18(3) of the Act, which provides as follows:-

“(3) Where the Board after preliminary



assessment under Section 15 pass an order that there is a need for trial of the said child as an adult, then the Board may order transfer of the trial of the case to the Children's Court having jurisdiction to try offences".

9. In such view of the matter, there is no assessment of age by the Juvenile Justice Board, Patna, who is competent to make enquiry regarding the child in conflict with law and Section 94 of the Act provides for procedure to be followed for presumption and determination of age, which reads as follows:-

1. Where, it is obvious to the Committee or the Board, based on the appearance of the person brought before it under any of the provisions of this Act (other than for the purpose of giving evidence) that the said person is a child, the Committee or the Board shall record such observation stating the age of the child as nearly as may be and proceed with the inquiry under section 14 or section 36, as the case may be, without waiting for further confirmation of the age.
2. In case, the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination, by seeking evidence by obtaining —
 - i. the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;
 - ii. the birth certificate given by a corporation or a municipal authority or a panchayat;
 - iii. and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board:

Provided such age determination test conducted on the



order of the Committee or the Board shall be completed within fifteen days from the date of such order.

3. The age recorded by the Committee or the Board to be the age of person so brought before it shall, for the purpose of this Act, be deemed to be the true age of that person.

10. In such view of the matter, there is total non application of mind by the learned 1st Additional Sessions Judge cum Special Judge, Nalanda at Biharsharif as well as by the Juvenile Justice Board, Patna, as the offence comes under the purview of heinous offence as defined under Section 2(33) of the Act. Hence, the order of both the courts below does not appear to be sustainable in the eye of law, as the Juvenile Justice Board has to pass an order under Section 15 of the Act after assessment of mental and physical condition of the accused and, thereafter, has to pass an order under Section 18(3) of the Act but those provisions have not been followed.

11. Accordingly, the order dated 23.08.2018 passed by the 1st Additional Sessions Judge cum Special Judge, Nalanda at Biharsharif as well as the order 02.08.2018 passed by the Juvenile Justice Board, Patna is set aside. The matter is remitted back to the Juvenile Justice Board for determination of the age of the petitioner and if he is found above sixteen years, then, after following the provisions contained in Section 15 and 18(3) of the Act pass an appropriate order.



12. With the aforesaid observation, this application is disposed
of.

(Vinod Kumar Sinha, J)

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