

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.40720 of 2019

Arising Out of PS. Case No.-176 Year-2018 Thana- Gardanibag District- Patna

Tarun Yadav @ Tarun Kumar Son of Late Ranjit Gop under the Guardianship of Urmila Devi W/o Late Ranjit Gope, R/village-Karauri Chak, P.S-Phulwarisharif, District-Patna.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Ranjit Yadav Son of Krishna Prasad Resident of Village-Manikchand Talab, P.S.-Gardanibagh, District-Patna.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Prashant Kumar
For the Opposite Party/s : Mr. Jharkhandi Upadhyay

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL ORDER

2 18-07-2019 Heard the learned counsel for the petitioner and the State.

The petitioner has challenged the order dated 02.04.2019 passed by the Fast Track Court - I, Patna in connection with Sessions Case No. 624 of 2018 arising out of Gardanibagh P. S. Case No. 566 of 2018 (G.R. No. 4743 of 2018), whereby the application preferred on behalf of the petitioner / accused, who has approached this Court through the guardianship of his mother for being declared a juvenile, has been rejected.

Learned counsel for the petitioner has drawn the



attention of this Court to the fact that despite the Court identifying that the date of birth of the petitioner which is entered in the school is 05.11.2002, whereas the date of occurrence is 12.05.2018, he has not acceded to the request of the petitioner for declaring him a juvenile on the ground that on physical verification of the petitioner, he found that he was a major. The reason assigned by the Court for coming to this conclusion is the secondary hair growth on the body of the accused which conforms that he is more than 18 years of age.

It has been submitted on behalf of the petitioner that the aforesaid reason cannot be the basis for rejecting a petition of an accused for being declared a juvenile.

Section 9 of the Juvenile Justice (Care and Protection of Children) Act, 2015 reads as follows:

"9. Procedure to be followed by a Magistrate who has not been empowered under this Act - (1) When a Magistrate, not empowered to exercise the powers of the Board under this Act is of the opinion that the person alleged to have committed the offence and brought before him is a child, he shall, without any delay, record such opinion and forward the child immediately along



with the record of such proceedings to the Board having jurisdiction.

(2) In case a person alleged to have committed an offence claims before a court other than a Board, that the person is a child or was a child on the date of commission of the offence, or if the court itself is of the opinion that the person was a child on the date of commission of the offence, the said court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) to determine the age of such person, and shall record a finding on the matter, stating the age of the person as nearly as may be:

Provided that such a claim may be raised before any court and it shall be recognised at any stage, even after final disposal of the case, and such a claim shall be determined in accordance with the provisions contained in this Act and the rules made thereunder even if the person has ceased to be a child on or before the date of commencement of this Act.

(3) If the court finds that a person has committed an offence and was a child on the date of commission of such offence, it shall forward the child to the Board for passing appropriate orders and the sentence, if any, passed by the court shall be deemed to have no effect.

(4) In case a person under this section is required to be kept in protective custody, while the persons claim of being a child is being inquired into, such person may be placed, in the intervening period in a place of safety."



Sub-clause 2 of Section 9 clearly mandates that in case a person alleged to have committed an offence claims juvenility before any Court other than a Board, the said Court would be under an obligation to make an enquiry, take such evidence as may be necessary which would not be an affidavit and determine the age of such person and shall record a finding on the matter, stating the age of the persons as nearly as may be.

The proviso to the Section further specifies that such plea could be taken by an accused before any Court at any stage and even after the final disposal of the case and such a claim shall be determined in accordance with the provisions contained in the Act and Rules made therein even if such person has ceased to be a child on or before date of commencement of the Act.

The procedure for determining whether a person / applicant is a juvenile is well set out in the Act and the manner in which the learned court below has decided the issue is not correct.

For the aforesaid reason, the order dated



02.04.2019 is set aside.

The matter is remitted to the learned Fast Track Court to either decide the issue of juvenility himself or remit the matter to the Juvenile Justice Board for determining whether the petitioner / accused / applicant is a juvenile. In case the matter is remitted to the Juvenile Justice Board and it is found that he is a juvenile, the Juvenile Justice Board shall be under further obligation to assess the mental condition of the petitioner if on the date of occurrence he was more than 16 years of age and less than 18 years of age and the applicant was made accused of a heinous case as defined under Section 2(33) of the Juvenile Justice (Care and Protection of Children) Act, 2015.

The aforesaid order shall be passed by the learned trial court within a period of four weeks from the date of production/communication of a copy of this order.

The application stands allowed accordingly.

(Ashutosh Kumar, J)

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