

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.742 of 2019

Arising Out of PS. Case No.-7 Year-2019 Thana- MAIRWAN District- Siwan

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Anil Kumar @ Guddu Kharwar Son of Shri Rajendra Kharwar @ Rajendra Prasad Resident of Village- Harpur, Police Station- Mairwa, District- Siwan under the guardianship of his Father Shri Rajendra Kharwar @ Rajendra Prasad son of Ramavtar Prasad.

... .. Petitioner/s

Versus

The State Of Bihar

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Gaurav Kumar, Advocate Mr. Ajay Kumar Tiwary, Advocate
For the Respondent/s	:	Mrs.Usha Kumari 1, APP

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 17-12-2019

Heard learned counsel for the parties.

2. The impugned order dated 27.05.2019 has been passed by the Children's Court Siwan in Juvenile Trial No.8 of 2019. Hence, an appeal is maintainable before this Court in view of the provisions of Section 101(5) of the Juvenile Justice (Care and Protection of Children) Act, 2015. However, a criminal revision has been filed under Section 53 of the Juvenile Justice (Care and Protection of Children) Act, 2000 on 01.07.2019. This application is being treated as an



appeal.

3. The appellant is an accused in connection with Mairwa P.S. Case No.7 of 2019, registered under Section 302/34 of the Indian Penal Code.

4. According to FIR, the appellant and others were seen along with the deceased by the informant before death of the deceased and that is the reason for suspicion against four persons including the appellant. The appellant was declared juvenile by the Juvenile Justice Board. However, considering the mental capability of the appellant to understand the consequences of his act, the Juvenile Justice Board transferred the matter to the Children Court in exercise of power under Section 15 of the Act, 2015.

5. By the impugned order dated 27.05.2019, the Children Court has refused to release the appellant on bail. The appellant is already in custody since 17.01.2019. Prayer for bail has been refused on the ground that investigation of



the case was pending, the petitioner was physically and mentally capable of understanding the consequences of his Act. The social investigation report revealed that the appellant was capable of understanding the consequences of his act and the allegation was serious in nature.

6. Recently, a Division Bench of this Court in **Lalu Kumar And Others V. The State Of Bihar And Others** reported in **2019(4) PLJR 833** has held that the bail of the juvenile shall be considered under Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015 only either by the Juvenile Justice Board or by the Children Court. The Court further held that under the scheme of the Act, bail is a right of a juvenile and seriousness of the allegation cannot come in the way of grant of bail. The bail can be refused only if the case is covered under the proviso to Section 12 of the Act and for that there must be material to substantiate that in the event of release the juvenile would go



in company of any known criminal or there is chances of his physical, morale or psychological exploitation.

7. Since the Children Court has not considered the statutory provisions in correct perspective, the impugned order is not sustainable in law. Accordingly, the same is set aside and the appellant is directed to be released at once on execution of surety bond by either of the parents of the appellant giving undertaking that he/she shall keep proper care and upkeep of the appellant and shall fully cooperate in early conclusion of the enquiry pending before the Board.

8. With the aforesaid observation, this appeal is allowed.

(Birendra Kumar, J)

Mkr./-

AFR/NAFR	NAFR
CAV DATE	NA
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