

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1083 of 2018

Arising Out of PS. Case No.-33 Year-2017 Thana- BITHAN BAZAR District- Samastipur

Nitish Kumar under the guardianship of father namely Jay Karan Yadav Both are R/o Chhechhani, P.S. Bithan, Dist. - Samastipur.

... .. Petitioner

Versus

The State Of Bihar

... .. Respondent

Appearance :

For the Petitioner/s : Mr.Shubhesh Pandey
For the Respondent/s : Mr.Sri Arun Kumar Singh -5

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

6 10-12-2019 Heard learned Counsel for the petitioner and the learned APP for the State.

The petitioner was subjected to preliminary assessment as contemplated under Section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for brevity “the Act”). After due assessment of the physical and mental capability of the petitioner to commit the offence, to comprehend the consequences thereof and the circumstances in which the offence was committed, the matter has been referred to the Children’s Court for trying the offences against the petitioner (Juvenile), as an adult in view of the fact that the offence is heinous in terms of Section 2(33) of the Act and the age of the petitioner was determined as 17 years 6 months and 15 days at the time of occurrence.

The petitioner is in the Remand Home since 12.1.2018. The age of the petitioner has been assessed to be more than 17 years and less than 18 years at the time of commission of the offence. The allegation in the FIR is that the



petitioner along with other four co-accused called informant's son from his house. The informant thereafter heard cry of his son and when he came out of his house, he saw his son inflicted with gun shot injury. Son is said to have died as a result of such injuries.

The offence was falling in the category of heinous offence under Section 2(33) of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as 'J.J.Act'). Petitioner's case was assessed under Section 15 of said Act. The matter was transferred for consideration before the Child court for trying the child as an adult in terms of section 18(3) of the Act.

Counsel for the petitioner submits that another co-accused similarly situated as the petitioner and who too was in between 17 – 18 years namely Manish Kumar has already been directed to be released in Cr. Revision No. 666 of 2018.

Referring to the order passed by the Special Judge it is submitted that the application for release of the petitioner has been rejected without recording existence of circumstances which are required for refusing such an application as per provisions contained in Section 12 of the Act. The Court has not taken into account the necessary factors for rejecting the prayer for bail. Similarly situated accused has already been allowed bail and it is a case of false implication.

This Court would find from the order of the Special Court that it has not taken into consideration any material to suggest that the petitioner was likely to land in bad company or that the parents of the petitioner were not in a position to guide the petitioner appropriately. Without any such consideration petitioner's prayer for bail has been rejected even though the



petitioner has no criminal antecedent.

Hence, the order dated 2.8.2018 passed by 1st Additional Sessions Judge -cum- Special Judge, Children Court, Samastipur in connection with Bithan P.S. Case No. 33 of 2017 stands quashed and the petitioner is directed to be released at once on execution of surety bond by either of the parents of the petitioner giving undertaking that they shall keep proper care and upkeep of the petitioner and shall fully cooperate in the enquiry pending before the Board and on his furnishing bail bonds of Rs. 10,000/ (Ten Thousand) with two sureties of the like amount each to the satisfaction of the learned 1st Additional Sessions Judge -cum- Special Judge, Children Court, Samastipur in connection with Bithan P.S. Case No. 33 of 2017.

The present revision petition is accordingly allowed.

(Madhuresh Prasad, J)

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