

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1445 of 2019

Arising Out of PS. Case No.-658 Year-2018 Thana- KHAJANCHI HAT District- Purnia

Karn Kumar @ Raja @ Kishore Karn @ Kishore Karn Kumar S/o Binod Yadav @ Binod Kumar Yadav Resident of Village- Sahugarh Diwani Tola, Ward No. 13, P.S.- Madhepura, District- Madhepura.

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Pawan Kumar, Advocate

For the Respondent/s : Mr.Chandra Sen Prasad Singh, APP

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 05-12-2019

Heard learned counsel for the parties.

2. This criminal revision application has been preferred under Section 102 of the Juvenile Justice (Care & Protection of Children) Act against the order dated 05.11.2019 passed in Cr. Appeal No.36 of 2019/C.I.S.No.36 of 2019 by learned Additional Sessions Judge-I-cum-Special Judge, Children Court, Purnea, whereby appeal was dismissed against the order dated 26.07.2019 passed in G.R. No. 3365 of 2018 (arising out of K. Hat P.S.Case No.658 of 2018) by learned Principal Magistrate, Juvenile Justice Board, Purnea, refusing prayer for bail by the petitioner.

3. The petitioner is lying in the Remand Home, Purnea, in connection with Madhepura P.S. Case No.397 of 2015. On the basis of school certificate the date of birth of the



petitioner is 20.04.2001. Therefore, he was declared juvenile in Madhepura P.S. Case No.397 of 2015. In the present matter also by order dated 09.07.2019, the learned Juvenile Justice Board, found that on the date of present occurrence the petitioner was a juvenile.

4. The petitioner and others are accused in connection with K. Hat P.S. Case No.658 of 2018 registered under Sections 302/224/120B/34 of the Indian Penal Code as well as under Section 27 of the Arms Act.

5. According to First Information Report, the informant was In-Charge Superintendent of the Remand Home, Purnea, where the present petitioner and other children were kept. On 19.09.2018 the informant got telephonic information from the Superintendent that five juveniles in conflict with law including the petitioner committed murder of Bijendra Kumar, a staffer and murder of Juvenile Saroj Kumar by causing fire-arm injury.

6. The petitioner made prayer for bail before the learned Juvenile Justice Board under Section 12 of the Juvenile Justice Act and the prayer was refused by order dated 26.07.2019 passed in G.R. Case No.3365 of 2018, corresponding to K. Hat P.S. Case No.658 of 2018 on the



ground that social investigation report against the petitioner is in negative. No improvement in the behaviour of the petitioner has been noticed. Hence, allowing the petitioner on bail under Section 12 of the J.J. Act would defeat the objects of the Act. The order of the learned J.J. Board was challenged before the Children's Court in Cr. Appeal No.36 of 2019 and by order dated 05.11.2019 the Children's Court declined to interfere with the order of J.J. Board on the identical ground which are mentioned in the proviso to Section 12 of the Act.

7. Learned counsel submits that there is no eyewitness of the occurrence who claims to have actually seen the petitioner firing on any of the deceased. Only a witness stated that he had seen pistol in the hand of co-accused Subham Kumar Kushwaha.

8. The power and scope of Section 12 of the Act was under consideration before a Division Bench of this Court in **Lalu Kumar And Others V. The State Of Bihar And Others** reported in **2019(4) PLJR 833**. In paragraphs 84 to 86 of the judgment this Court observed as follows:

*“84. While interpreting
Section 12, the Board is duty bound to
be guided by the fundamental*



principles enumerated in Section 3 of the Act of 2015, specially the principles of 'best interest', 'repatriation' and 'restoration' of child. The fundamental principles in Section 3(xii) provides that a child shall be placed in institutional care as a step of last resort after making a reasonable inquiry. The gravity and nature of the offence are immaterial for consideration of bail under the Act of 2015. As per Section 12 of the Act of 2015, an application for bail is not decided by reference to classification of offences, as bailable or non-bailable under the Cr.P.C. All persons alleged to be in conflict with law and apparently a child when apprehended must be released except in the following three circumstances when there is reasonable ground for believing that :-



(i) The release is likely to bring that person into association with any known criminal;

(ii) The release is likely to expose the said person to moral or psychological danger; and

(iii) The release would defeat the ends of justice.

85. In all cases, the Board is required to record its reason, if it refuses to release the child on bail and the circumstances that laid to such a decision. Taking surety is not essential for ordering release of the child on bail. The child may be released without surety also. The child may be placed under the supervision of a 'probation officer' or under the care of any 'fit person' after release on bail. It further provides that in case the court has directed release of the child on bail after fulfilling certain conditions, but the child is unable to fulfill those conditions in the next seven days, the Board shall modify those conditions.



86. The Board is vested with the power to grant bail to any person, who has not completed the age of 18 years irrespective of the nature of offence being 'bailable' or 'non-bailable' or specified in any of three categories of the Act, as 'petty offences', 'serious offences' and 'heinous offences'."

9. The Division Bench further considered whether the seriousness of the offence alleged is a ground for rejection of the bail of a child in conflict with law? The Division Bench held that seriousness of the offence alleged cannot be made a ground for rejection of prayer for bail in the case of child in conflict with law for simple reason that the principle of bail under the Act of 2015 is not the same as enumerated under Chapter XXXIII of the Cr.P.C. Bail and not institutionalization continues to be the principle under the Act. The impugned orders reveal that the seriousness of the allegation prevailed upon the mind of the Courts-below in refusing the prayer for bail to the petitioner and other instances referred consistent with the proviso to Section 12 are not applicable because there was no material before the Courts below to believe that the release of the



petitioner was likely to bring the petitioner into association with any known criminals. There was no material to come to the conclusion that release would expose the petitioner to moral, physical or psychological danger. Nor the Courts below have assigned any reason that in the event of grant of bail the ends of justice would be defeated.

10. Therefore, in my view, the impugned orders are not sustainable in law as they are not consistent with the aim and objects of Juvenile Justice Act or the referred proviso under Section 12 of the Act.

11. Accordingly, both the orders are hereby set aside 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 early conclusion of the enquiry pending before the Board.

12. With the aforesaid observation, this application is allowed.

(Birendra Kumar, J)

Mkr./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	09.12.2019
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