

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.84 of 2020

In
CRIMINAL MISCELLANEOUS No.73385 of 2019

Arising Out of PS. Case No.-16 Year-2017 Thana- PATNA COMPLAINT CASE District-
Patna

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Anamul Haque, Male, aged about 17 years, under guardianship of Najarul Haque, Son of Jaynal Ali @ Jaynal Sheikh, Resident of Village-Belguri, P.O.- Belguri, P.S.- Agamoni, Golakganj, Distt-Dhubri (Assam).

... .. Appellant

Versus

The Union of India through Directorate of Revenue Intelligence

... .. Respondent

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Appearance :

For the Appellant : Mr. Tej Pratap Singh, Advocate.
For the Respondent : Mr. Dr. K.N. Singh, Addl. S.G. and Mr. Awadhesh Kumar Pandey, C.G.C.

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CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
CAV ORDER

8 23-12-2020 1. The instant appeal is directed against the order dated 27.08.2019, passed by the learned Additional Sessions Judge-I, Patna, in Spl. (Child) Case No. 01/19, arising out of Complaint Case No. 16/2016-17, corresponding Special Case No. 03/2017 filed by the DRI, Patna, under Sections 20(b), 23, 25 and 29 of the N.D.P.S. Act, whereby the prayer for bail made on behalf of the appellant (petitioner therein) having been rejected.

2. In summary, the whole matter is that the appellant is said to be the *Khalasi* of the *Truck* from where huge quantity i.e., 1814.70 kgs., of *Ganja* is said to have been recovered. The appellant was apprehended on the spot. Later on, the appellant



took the plea that he was a juvenile on the date of occurrence of crime. As a result of which, the proceedings before the Juvenile Justice Board (hereinafter referred to as 'the Board') got initiated and the Board assessed the age of the appellant as 16 years 09 months and 21 days. Therefore, the appellant was declared to be a juvenile; more appropriately called a 'child in conflict with law'. However, in view of the fact that the age of the appellant was more than 16 years and the offence allegedly committed by him falls into the category of 'heinous offences' the Board after conducting preliminary assessment with regard to the mental and physical capacity of the appellant passed an order under Section 18(3) of the Juvenile Justice Act, 2015, and transferred the case for trial to the Children's Court. Thereafter, the appellant moved before the Children's Court for grant of bail. The Children's Court vide its order dated 27.08.2019 rejected the bail application of the appellant. Hence, this appeal having been preferred by the appellant, challenging the rejection order and for grant of bail.

3. Learned counsel for the appellant submitted that the appellant was innocent and he having been falsely implicated in this case. He further submitted that the appellant has no criminal antecedent. It is also submitted by him that neither the appellant



had any knowledge of the contraband substance being kept in the *Truck* nor he had any concern with the recovered and seized *Ganja*. He lastly submitted that the alleged recovery had not been made from conscious possession of the appellant and prayed that since the appellant has been declared as a juvenile, thus, his prayer for bail be considered in accordance with Section 12 of the Juvenile Justice Act, 2015 and he is in custody since 04.01.2017.

4. Mr. Dr. K.N. Singh, learned Additional Solicitor General for the Union of India submitted that there is a huge quantity of recovery of *Ganja* in this case and the same is much beyond the commercial quantity, therefore, the prayer of bail of the appellant will have to be tested on the touchstone of Section 37 of the N.D.P.S. Act. In support of his submission, he has relied upon the decision given by the Orissa High Court in the case of **Antaryami Patra Vs State of Orissa**, reported in **1993 Cri. L.J.1908**, wherein it was held as under:

“Section 18 of the Juvenile Justice Act, (1986) made a general provision with regard to the right of a juvenile delinquent to be released on bail irrespective of the offences committed by him, but the NDPS Act is a special provision and in that special statute a further special provision has been made with regard to the pre-conditions to be satisfied for an accused being released on bail. Therefore, the said



special provision of the special statute, namely, Section 37 of the NDPS Act would override Section 18 of the Juvenile Justice Act (1986).”

He has further relied upon the judgments of Hon’ble Supreme Court given in the case of **Satpal Singh Vs. State of Punjab (2018) 12 SCC 813** and **State of Kerala Vs. Rajesh, Criminal Appeal No. 154157/2020**. In both these decisions the Hon’ble Supreme Court has put emphasis on the limitations and stringent provision of bail as stipulated under the NDPS Act.

5. After considering the rival submissions of the parties, the issue which has arisen for consideration before this Court is: Whether the prayer for bail of a juvenile is required to be considered in accordance with Section 12 of the Juvenile Justice Act or in accordance with the provision of Section 37 of the NDPS Act ?

6. Before dealing with the question of law which has arisen before this Court, it is necessary to examine both the sections which are reproduced herein below. Section 12 of the Juvenile Justice Act reads as under:

“Section 12-Bail to a person who is apparently a child alleged to be in conflict with law.

(1) When any person, who is apparently a child and is alleged to have committed a bailable or non-bailable offence, is apprehended or detained by the police or



appears or brought before a Board, such person shall, **notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, be released on bail with or without surety or placed under the supervision of a probation officer or under the care of any fit person:**

Provided that such person shall not be so released if there appears reasonable grounds for believing that the release is likely to bring that person into association with any known criminal or expose the said person to moral, physical or psychological danger or the person's release would defeat the ends of justice, and the Board shall record the reasons for denying the bail and circumstances that led to such a decision.

(2) When such person having been apprehended is not released on bail under sub section (1) by the officer-in-charge of the police station such officer shall cause the person to be kept only in an observation home in such manner as may be prescribed until the person can be brought before a Board.

(3) When such person is not released on bail under sub-section (1) by the Board, it shall make an order sending him to an observation home or a place of safety, as the case may be, for such period during the pendency of the inquiry regarding the person, as may be specified in the order.

(4) When a child in conflict with law is unable to fulfil the conditions of bail order within seven days of the bail order, such child shall be produced before the Board for modification of the conditions of bail.”

Whereas, Section 37 of NDPS Act is as under:

“Section 37-Offences to be cognizable and



non- bailable-

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)-

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for 2 (offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity shall be released on bail or on his own bond unless-

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail.”

7. At this juncture, this Court finds gainful to discuss some of the decisions rendered by other High Courts on the same issue as being framed in this case. This Court would refer the order passed by the Allahabad High Court in **Praveen Kumar Maurya Vs. State of U.P. reported in 2011 Cr. L.J. 200; MANU/UP/1184/2010** wherein the Allahabad High Court while dealing with the same issue has held in paragraph 12 as under:



“12. In Section 12 of the Juvenile Act, a non obstante provision “notwithstanding anything contained in the Code of Criminal Procedure, 1973 or in any other law for the time being in force” has been placed, which clearly indicates that the provisions of Section 12 of the Juvenile Act has an oberriding effect not only on the Code but also on other laws, if any, for the time being in force. It is also true that Section 37 of the NDPS Act, 1985 has also a non obstance clause, according to which the provisions of Section 37 of the NDPS Act 1985 have effect notwithstanding anything contained in the Code. **Therefore, Section 37 of the NDPS Act, 1985 has an overriding effect only on the Code and not on other laws. Moreover, the NDPS Act was enacted in the year 1985 and was in force on the date of commencement of the Juvenile Act, therefore, the non obstante provision “notwithstanding anything contained in the Code of Criminal Procedure, 1973 or any other law for the time being in force” contained in Section 12 of the Juvenile Act, overrides also the provisions of Section 37 of the NDPS Act because the NDPS Act squarely falls within the expression “ any other law for the time being in force”, contained in Section 12 of the Juvenile Act. It is also relevant to mention that when there is a conflict between the two enactments, the later enactment prevails. This proposition has been laid down by the Apex Court in the case of Solidaire India Ltd., Vs. Fairgrowth Financial Services Ltd., and Ors. MANU/SC/0009/2001 :JT 2001 (2) SC 639. ”**

8. The Orissa High Court also had occasion to decide the same issue which had arisen before it in **Sumanta Bindhani**



Vs. State of Orissa reported in 2017(I)OLR 1137;
MANU/OR/0360/2017, wherein the Orissa High Court has held
in paragraph no. 8 of the judgment in the following terms.-

“8. The legislature has provided for the juvenile to be extended special care, treatment, development and rehabilitation. The Juvenile Justice (Care and Protection of Children) Act, 2015(hereinafter ‘2015 Act’) contemplates total separation of juveniles from the mainstream offenders. **Both the Acts, viz., 2015 Act and N.D.P.S. Act are Special Acts passed by the Parliament and contain non-obstante clauses having overriding effect in the bail matters but the juveniles having been given special place in the scheme of things, section 12 of the 2015 Act overrides the provisions under section 37 of the N.D.P.S. Act, in the case of a person who is a juvenile.”**

Also, in the case of **Ranjit Paika and Ors. Vs. State of Orissa reported in 2018 (II)OLR13;**
MANU/OR/0391/2018 the Orissa High Court has on the same
issue held in paragraph 12 of this judgment as under:

“12. The rights of the juvenile has been placed on a high pedestal by the legislature and the procedure prescribed under the 2000 Act governs all cases concerning juveniles in conflict with law irrespective of the offence they are alleged to have committed as well as all children covered under the definition of ‘children in need of care and protection’. Every aspect of the matter including detention, prosecution, sentencing, rehabilitation, restoration of a person who has not completed eighteen



years of age has to be dealt with in accordance with provisions of the 2000 Act. The Parliament was very much aware of the existence of the provision under section 37 of the N.D.P.S. Act, 1985 when they introduced 2000 Act which came into force w.e.f. 22.08.2006 and particularly the provision under section 12 of the said Act. Section 12 of the 2000 Act makes it clear that bail could only be refused when the Court comes to the conclusion that there are reasonable grounds for believing that the release of juvenile is likely to bring him into association with any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice.

9, It is necessary to clarify here that the case of **Antaryami Patra(supra)** as cited by the learned Additional Solicitor General was referred and discussed in **Ranjit Paika and Ors. (supra)** and the Orissa High Court after considering the judgment of **Antaryami Patra (supra)** has taken a different view and in my opinion also rightly so held in the following terms:

“10. It is pertinent to note that Juvenile Justice Act, 1986 has undergone a sea change in the 2000 Act and further by insertion in Juvenile Justice (Care and Protection of Children) Amendment Act, 2006 (33 of 2006) which came into force on 22.08.2006 and further in 2015 Act. The Juvenile Justice Act, 1986 was repealed as per section 69 of the 2000 Act.

11. In the statement of objects and reasons in Amendment Act 33 of 2006, it is



indicated that the modifications proposed in the bail, *inter alia*, intend to clarify that the Juvenile Justice Act shall apply to all cases involving detention or criminal prosecution of juveniles under any other law.”

12. After considering the above referred decisions, there is no doubt that Juvenile Justice Act, 2015 and NDPS Act, 1985 are Central legislations and both have been enacted by the Parliament as Special Laws dealing with particular objects. The NDPS Act, is a penal statute enacted for prohibition, control and regulation of Narcotic Drugs and Psychotropic Substances whereas, the Juvenile Justice Act, *inter alia* deals with those children alleged and found to be in conflict with law. The Juvenile Justice Act lays down the procedure as to how the children who are in conflict with law shall be dealt within the matter of apprehension, detention, prosecution etc. Section 12 of the Juvenile Justice Act, deals with the provisions for grant of bail regarding the child in conflict with law. The non-obstante clause contained in Section 12 not only confers a special status over the Code of Criminal Procedure, 1973, but also over any other law for the time being in force. Further, no exception being carved out for the offences related to NDPS Act, sufficiently indicates that the intention of the legislature was to given an overriding effect to Section 12 of Juvenile Justice Act



over Section 37 of the NDPS Act also. Furthermore, considering the decision of the Hon'ble Supreme Court rendered in the case of **Sarwan Singh Vs. Kasturi Lal AIR 1977, SC 265 and Union of India Vs Ranjeet Kumar Sinha and Another (2019)7 SCC 505**, this Court of the view that while harmoniously construing the provisions of two legislations, it is to be presumed that the legislature has enacted the later enactments with knowledge of the provisions of the former legislation, and therefore, a non-obstante clause in subsequent legislation, may be regarded as overriding effect. This proposition also gets fortified by the decision given by the Hon'ble Supreme Court in ***Solidaire India Ltd. Vs. Fairgrowth Financial Services Ltd., and Ors. MANU/SC/0009/2001: JT 2001 (2) SC 639***. Furthermore, this Court is also in agreement with the reasoning and view expressed by the Allahabad High Court and the Orissa High Court in the cases of **Praveen Kumar Maurya (supra) and Sumanta Bindhani (supra)**.

13. Now, coming to the case in hand, it is a fact that the appellant has been declared as a juvenile, and on the basis of the foregoing discussions, this Court is of the view that the negation and conditions as enunciated in Section 37 of the NDPS Act, will not be applicable in the case of a juvenile. Thus,



prayer of bail of the appellant will be dealt with in accordance with Section 12 of the Juvenile Justice Act, 2015 and Section 37 of the NDPS Act having no bearing in matter of grant of bail of a juvenile. The issue, as referred above, is answered, accordingly.

14. The order under challenge itself shows that the prayer of bail of the appellant has not been considered in terms of Section 12 of the Juvenile Justice Act, 2015. There is no finding about the conditions prescribed under Section 12 for rejection of bail of a juvenile. However, from the materials available on records, it appears that the appellant is a resident of the State of Assam and admittedly he was in the said *Truck* as a *Khalasi* at the time of interception by DRI officers from where 1814.70 kgs., of *Ganja* having been recovered. Therefore, appellant had been working for gain in association with the driver and the carrier of *Ganja*, who all were involved in illegal transportation of *Ganja*. The statement of the appellant having been recorded under Section 67 of the N.D.P.S. Act, together with the fact that the Juvenile Board on enquiry assessed the age of the appellant more than Sixteen Years on the date of commission of the offence, consequently, considering the nature of the offence to be heinous, conducted preliminary assessment



regarding mental and physical capacity to commit and understand the consequences of the offence and after being satisfied passed an order for trial of the appellant as an adult before the Children's Court. The Children's Court has also decided to conduct the trial of the appellant as an adult, accordingly, charges having been framed in this matter against the appellant, therefore, taking into consideration that the release of the appellant would likely to bring him in the association of such persons who are involved in illegal transportation of Narcotic and Psychotropic Substances, thus appellant's release would defeat the ends of justice. Hence, I am not inclined to grant bail to the appellant.

This appeal is, therefore, accordingly, dismissed. However, the learned court below is directed to expedite the trial and conclude the same preferably within a period of six months from the date of receipt/production of copy of this order.

(Sudhir Singh, J)

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