

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL REVISION No.50 of 2020

Arising Out of PS. Case No.-289 Year-2019 Thana- DUMRAO District- Buxar

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XX

... .. Petitioner

Versus

The State of Bihar

... .. Respondent

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Appearance :

For the Petitioner : Mr.Shivendra Kumar Sinha, Advocate

For the Respondent : Mr.Dilip Kumar No. 1, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGEMENT

Date: 25-09-2020

Heard learned counsel for the parties via video conferencing.

2. Though the petitioner has given full description in the application, it would be inappropriate to disclose his identity in view of the statutory provisions prescribed under Section 74 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short 'the Act of 2015'). He is being referred to in the cause title as XX.

3. Registry while uploading the order on the website shall also ensure that the cause title is reflected in similar manner.

4. This criminal revision application has been preferred under Section 102 of the Act of 2015 against the judgment dated 12.12.2019 passed by learned 1st Additional



District & Sessions Judge-cum-Special Judge, Buxar in Cr. Appeal No.105 of 2019 whereby he has rejected the appeal preferred by the petitioner under Section 101 of the Act of 2015 and upheld the order dated 06.11.2019 passed by the learned Principal Magistrate, Juvenile Justice Board, Buxar in connection with JJB Case No. 606 of 2019 arising out of Dumraon P. S. Case No.289 of 2019 registered under Sections 363 and 365 and 302/34 of the Indian Penal Code.

5. The prosecution case is based on the written statement of the informant Gajendra Tiwari. He has stated in his report that on 07.08.2019, at about 3.30 PM, his son had gone to see fair after informing his mother. However, he did not return home till night. On the basis of the aforesaid allegation, a case under Sections 363 and 365 of the Indian Penal Code was registered. Subsequently, the body of the son of the informant was found near the stairs of a partially constructed house situated behind the power substation and, thereafter, Section 302 of the IPC was added to the FIR.

6. The petitioner is lodged in the observation home, Ara since 27.08.2019. His prayer for bail was rejected by the Juvenile Justice Board, Buxar vide order dated 06.11.2019.

7. He assailed the aforesaid order dated 06.11.2019 by way of filing an appeal vide Cr. Appeal No. 105 of



2019 before the learned 1st Additional Sessions Judge-cum-Special Judge, Buxar, who vide impugned order dated 12.12.2019 upheld the order passed by the Juvenile Justice Board, Buxar and rejected the appeal preferred by the petitioner.

8. It is submitted by Mr. Shivendra Kumar Sinha, learned counsel for the petitioner that the petitioner is not named in the FIR. His name transpired in course of investigation. The entire investigation conducted till the date when the matter was being considered by the court below as would appear from the impugned order is that the petitioner was last seen with the deceased. The investigation conducted so far only reveals that the petitioner was last seen with the deceased. He contended that the entire case rests on the circumstantial evidence. He submitted that a similarly circumstanced co-accused Azad Kumar @ Prince Kumar Raj @ Prince Kumar Ray has already been granted bail by this Court vide order dated 15.06.2020 passed in Criminal Revision No.1569 of 2019.

9. He further submitted that neither the Juvenile Justice Board nor the Special Court could appreciate the ratio laid down by this Court in **Lalu Kumar & Ors. vs. The State of Bihar & Ors.** reported in **2019(4) PLJR 833** while passing order on the application for bail of the petitioner.



10. He also contended that seriousness of the offence alleged cannot be made a ground for rejection of prayer for bail in the case of a child in conflict with law. Moreover, there was no material before the court below to come to the conclusion that his release would expose him to moral, physical or psychological danger.

11. Learned counsel for the State has opposed the prayer for grant of bail to the petitioner.

12. It would be evident from the order of the Juvenile Justice Board that the prayer for bail of the petitioner was rejected on the ground that the offence alleged is of heinous nature and the matter is still under investigation. After recording these reasons, Juvenile Justice Board came to the conclusion that in case, he is released on bail, there may be discord in the society and the retaliation may cause moral, physical and psychological danger to the petitioner.

13. The appellate court while upholding the order of the Juvenile Justice Board has recorded that the offence is grave and there is possibility of association of the juvenile with adult criminals.

14. The ambit and scope of Section 12 of the Act was under consideration before a Division Bench of this Court in **Lalu Kumar & Ors. vs. The State of Bihar & Ors.** (supra).



15. In paragraphs 84 to 86 of the aforesaid judgment this Court observed:

“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'."

16. 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. It 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.

17. As noted above, the impugned order would reveal that the seriousness of the allegation and the other instances referred to in the proviso to sub-section (1) of Section 12 of the Act of 2015 prevailed upon the mind of the appellate court and the Juvenile Justice Board in refusing the prayer for bail of the petitioner. There was no material before the court below to come to the conclusion that release would expose the petitioner to moral, physical or psychological danger. The Court below has also not assigned any reason as to how in the event of grant of bail the ends of justice would be defeated. Apparently, the case of the petitioner is not distinguishable to the case of co-accused Azad Kumar @ Prince Kumar Raj @ Prince Kumar Ray who has already been granted bail by this Court. The discord in the society or apprehension of retaliation could not have been a valid ground for rejection of the bail of the petitioner.

18. For the reasons noted above, the impugned judgment dated 12.12.2019 passed by learned 1st Additional District & Sessions Judge-cum-Special Judge, Buxar in Cr. Appeal No.105 of 2019 arising out of Dumraon P. S. Case No.289 of 2019



is not sustainable in law as it is not consistent with the aims and object of Section 12 of the Act of 2015.

19. Accordingly, the impugned judgment dated 12.12.2019 passed by learned 1st Additional District & Sessions Judge-cum-Special Judge, Buxar in Cr. Appeal No.105 of 2019 is set aside. Consequently, order dated 06.11.2019 passed by learned Principal Magistrate, Juvenile Justice Board, Buxar in connection with JJB Case No. 606 of 2019 arising out of Dumraon P. S. Case No.289 of 2019 is also set aside.

20. The petitioner is directed to be released on bail on furnishing bail bond of Rs.10,000/-(ten thousand) with two sureties of the like amount each to the satisfaction of the Juvenile Justice Board, Buxar in connection with Dumraon P. S. Case No.289 of 2019.

21. The revision application stands allowed.

22. Since the court proceedings are being conducted through virtual mode and normal court functioning has not been restored till date, it is considered appropriate to adopt the following procedure for communication of the present order:-

- i. The judgment, which has been dictated during the course of proceeding of the virtual



court, shall be communicated to me on my email by the Sr. Secretary.

- II. The corrected copy of the judgment shall be transmitted by me from my email id to the Sr. Secretary, which shall be treated to be an authentic copy of the order passed by this Court in the present proceeding.
- III. Hard copy of the judgment duly signed by me shall be preserved in my residential office for documentation and future use, if any.
- IV. Let a copy of the judgment be sent Mr. Shivendra Kumar Sinha, learned counsel for the petitioner also on his email.
- V. Let steps be taken by the Sr. Secretary/registry for up-loading of the present order without compromising with the norms of social distancing.

(Ashwani Kumar Singh, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	27.09.2020
Transmission Date	27.09.2020

