

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.119 of 2020**

Arising Out of PS. Case No.-173 Year-2019 Thana- SILAO District- Nalanda

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Amar Kumar @ Futtu aged about 16 years S/o Shambhu Singh Resident of
Village- Bhadari, P.S.- Silao, Distt- Nalanda.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opp. Party/s

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Appearance :

For the Petitioner/s	:	Mr. Amarnath Singh, Advocate
For the State	:	Mr. Zainul Abedin, APP
For the Informant	:	Mr. Ramakant Sharma, Sr. Advocate with Mr. Lakshmi Kant Sharma, Advocate

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**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT**

Date : 30-06-2020

The matter has been heard *via* video conferencing due to lockdown imposed on account of the COVID-19 pandemic.

2. Heard Mr. Amarnath Singh, learned counsel for the petitioner; Mr. Zainul Abedin, learned Additional Public Prosecutor (hereinafter referred to as the ‘APP’) for the State and Mr. Ramakant Sharma, learned senior counsel along with Mr. Lakshmi Kant Sharma, learned counsel for the informant, who have *suo motu* appeared.

3. The petitioner has moved the Court for the following reliefs:

“That application on behalf of the petitioner is for setting aside the order dated 19.12.2019 passed in Juvenile Appeal no. 34 of 2019 by the learned 1st Additional Sessions Judge cum Spl. Judge, Nalanda



at Bihar Sharif and also set aside the order dated 23-10-2019 passed by the learned Juvenile Justice Board in connection with J.J. Bno. 563 of 2019 arising out of Silao P.S. case no. 173/19 registered under section 452, 376 I.P.C. and section 4 of the POCSO Act whereby and where under the pleas of the Juvenility of the petitioner has been rejected by the learned court below.”

4. Learned counsel for the petitioner submitted that the Juvenile Justice Board (hereinafter referred to as the ‘Board’) has wrongly determined that the petitioner was not a juvenile on the date of occurrence i.e., 30.08.2019. It was submitted that once the petitioner had produced the certificate of his school and the matriculation certificate, those documents should have been relied upon while conducting enquiry for determination of age of the person concerned. It was submitted that as per the same, the petitioner was born in the year 2004, whereas the Board has misdirected itself by relying upon the report of the Medical Board which has opined his age to be between 19-20 years. Learned counsel submitted that as per the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as the ‘Act’) read with Bihar Juvenile Justice (Care and Protection of Children) Rules, 2017 (hereinafter referred to as the ‘Rules’), the document which has to be relied upon is the certificate of the school first



attended/matriculation certificate followed by the birth certificate issued by the Local Authority/Municipal Body and only then the Medical Board report has to be called. Learned counsel submitted that only on the basis of the medical report and the report of the Headmaster of another school, in which the petitioner is shown to have been born in the year 2000, giving a finding with regard to the petitioner not being a juvenile, is not valid in the eyes of law. Learned counsel further submitted that if there is a dispute on the point of determination of age, as in the present case, such enquiry not having been resorted to, the petitioner has wrongly been held not to be a juvenile on the date of occurrence. However, he submitted that for the ends of justice, the Court would give an opportunity for the truth to come out in accordance with law. Learned counsel submitted that under the provisions of the Act, it is the Board which has to order for Medical examination, and thereafter proceed with the enquiry, in accordance with law, and then give a finding, recording its reasons, which, in the present case, has not been done.

5. Learned APP submitted that there was sufficient material before the Board, including the already existing report of the Medical Board holding the petitioner to be aged 19-20



years on the very next day of occurrence and further that the Headmaster of the school first attended by the petitioner 13 years back having produced before the Board the original admission register, and the Board recording that there was no interpolation, overwriting or whitener used in such record/entry, holding the petitioner not to be a juvenile is sound in law. However, learned APP submitted that the Board may go through the exercise once again.

6. Learned counsel for the informant submitted that once the medical report was already before the Board, much prior to the plea taken on behalf of the petitioner to declare him a juvenile, the Board could not have shut its eyes and was required to take cognizance and the same, being a scientific report admissible as evidence in law, coupled with the evidence produced by the Headmaster of the school first attended by the petitioner, that too 13 years back, which was sufficient to come to the finding that he was aged 19 years on the date of occurrence. Learned counsel submitted that ultimately the law is with a particular objective, that a benefit should accrue to a person who is genuinely a juvenile, but not for abusing and manipulating the system and the law by creating records which are falsified by strong evidentiary records to the contrary, which



in the present case is the Medical Report and the entry in the register of admission in the school first attended by the petitioner. However, he also submitted that the Court may direct for a fresh medical examination, which should be conducted in scientific terms so that the correct age of the petitioner is before the Board to enable it to record a finding after following the procedure prescribed in law.

7. Having considered the aforesaid, without expressing any opinion on the merit of the rival contentions, the matter is remitted to the Board for giving a fresh finding with regard to the juvenility of the petitioner on the date of occurrence; for which, the Board would refer the matter to a Medical Board for giving a report. The Medical Board to be constituted will consist of at least 5 members, including an Orthopaedic, a Radiologist and a Dentist, besides other persons, at the discretion of the Civil Surgeon of the district concerned. Once such report is forwarded to the Board, it will proceed with an enquiry, in terms of the provisions of the Act and the Rules, and record a finding with regard to the plea of the petitioner to declare him a juvenile on the date of occurrence, after considering all issues which may be raised before it relating to admissibility of documents which may be produced before the



Board by the respective parties, in accordance with law. The petitioner as well as the informant shall be given opportunity to assist in the enquiry for such age determination. The orders impugned shall not come in the way of the Board passing a fresh order.

8. The Court records that the order has been passed with consent of learned counsel for the parties.

9. The revision application stands disposed off in the aforementioned terms.

10. Before parting, the Court would only observe that since the matter has been pending for long, the exercise be completed expeditiously.

(Ahsanuddin Amanullah, J)

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