

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.170 of 2020

Arising Out of PS. Case No.-183 Year-2019 Thana- RUNISAIDPUR District- Sitamarhi

XX

... .. Petitioner

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Petitioner/s : Mr. Surendra Kishore Thakur, Adv.

For the Respondent/s : Mr. Shyam Bihari Singh, APP

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 17-06-2020

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 Juvenile Justice (Care & Protection of Children) Act, 2015 against the judgment dated 09.01.2020 passed by the learned 1st Additional Sessions Judge-cum-Special Judge (Children Court), Sitamarhi in Cr.Appeal No. 59/2019/ 26/2019



whereby the appeal was dismissed affirming the order dated 16.08.2019 passed by the Juvenile Justice Board, Sitamarhi in J.J.B. Case No. 909 of 2019 arising out of Runnisaidpur P.S. Case No. 183 of 2019 registered under Sections 399, 402, 414 of the Indian Penal Code and Sections 25(1-B)(a), 26 and 35 of the Arms Act refusing prayer for bail of the petitioner.

5. The petitioner is lodged in the Observation Home at Muzaffarpur.

6. The Juvenile Justice Board, Sitamarhi, vide order dated 15.07.2019, declared the petitioner a juvenile in conflict with law by assessing his age as 17 years 6 months and 10 days.

7. The prosecution case is that on 16.05.2019 the Sub-Inspector of Police Ram Pravesh Uraon informed the informant that during raid he has caught the petitioner, who is accused in Runnisaidpur P.S. Case No. 158 of 2019 under Section 302/34 of the Indian Penal Code and Runnisaidpur P.S. Case No. 180 of 2019 under Section 392 of the Indian Penal Code. On the confessional statement of the petitioner, the informant raided the house of one Bambam Kumar and arrested three accused persons and on search of their person and house, several arms, ammunition, loaded magazines and other incriminating articles were recovered.



8. The prayer for bail of the petitioner was rejected by the Juvenile Justice Board, Sitamarhi vide order dated 16.08.2019.

9. The petitioner assailed the aforesaid order dated 16.08.2019 in appeal vide Cr. Appeal No.59/2019/ 26/2019 before the learned 1st Additional Sessions Judge-cum-Special Judge, Sitamarhi.

10. The Special Court, vide impugned order dated 09.01.2020, upheld the order passed by the Juvenile Justice Board, Sitamarhi and rejected the appeal preferred by the petitioner.

11. Learned counsel for the petitioner submitted that neither any recovery has been made from the possession of the petitioner nor his signature has been taken on the seizure list.

12. He 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**.

13. He 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.



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

15. It would be evident from order of the Juvenile Justice Board that the prayer for bail of the petitioner was rejected on the ground that the petitioner is involved in other cases also, which are pending before the Juvenile Justice Board, Sitamarhi and his friends are mostly elder than him and his release would also expose him to moral, physical and psychological danger. The Special Court has rejected his appeal on the aforesaid grounds as also on the ground of gravity of the offence.

16. 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).

17. 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'."



18. 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.

19. 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 special court and the JJB in refusing the prayer for bail of the petitioner. There was also no material before the court below to believe that the release of the petitioner would bring him into association with any known criminals. There was also no material 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.

20. For the reasons noted above, the impugned judgment dated 09.01.2020 passed by the learned 1st Additional Sessions



Judge-cum-Special Judge, Sitamarhi in Cr. Appeal No.59/2010/26/2019 arising out of Runnisaidpur P.S. Case No. 183 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.

21. Accordingly, the impugned judgment dated 09.01.2020 passed by the learned 1st Additional Sessions Judge-cum-Special Judge, Sitamarhi is set aside. Consequently, the order dated 16.08.2019 passed by the Juvenile Justice Board, Sitamarhi in JJB Case No. 909 of 2019 arising out of Runnisaidpur P.S. Case No.183 of 2019 is also set aside.

22. 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 Juvenile Justice Board, Sitamarhi in Runnisaidpur P.S. Case No.183 of 2019.

23. The revision application stands allowed.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	
Transmission Date	

