

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.208 of 2020**

Arising Out of PS. Case No.-593 Year-2019 Thana- JAHANABAD District- Jehanabad

X5

... .. Petitioner

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Petitioner	:	Mr. Nitya Nand Neeraj, Advocate
For the Respondent	:	Mr. Ramchandra Singh, APP

**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT**

Date : 02-07-2020

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 X5.

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



29.01.2020 passed in Cr. Appeal No.2/2020-4/2020 by learned 1st Additional District and Sessions Judge, Jehanabad whereby the appeal was dismissed against the order dated 23.12.2019 passed in Jehanabad P.S. Case No.593 of 2019 registered under Section 379 of the Indian Penal Code by the Juvenile Justice Board, Jehanabad, refusing prayer for bail of the petitioner.

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

6. The Juvenile Justice Board, Jehanabad, vide order dated 25.10.2019, determined the age of petitioner as 16 year, 10 months and 19 days on the date of occurrence on the basis of the document produced by him, which were duly certified by the District Education Officer, Jehanabad vide letter No.2087 of 2019 dated 21.10.19. Hence, he was declared a juvenile in conflict with law on the date of occurrence.

7. The prosecution case is based on the written report submitted by one Naveen Kumar to the SHO Town Police Station, Jehanabad in which he has stated that he runs a coaching institute in Gandhi Nagar Muhalla of Jehanabad. On 24.07.2019, while he was in his office, at about 11:52 a.m., two persons came and told him that they have some work related issues. He told them to wait in the office because at that time he



was teaching in the class. He further stated that just after 30-40 second, both of them went out of his office and told that they will come back in ten minutes. At 12:00 noon when he went to his office, he found that Rs.13000/- which was kept in drawer of his table was missing. Thereafter, he saw the C.C.T.V. footage and found that those two persons were taking out the money from his drawer.

8. The petitioner was remanded in the present case on 07.09.2019. His prayer for bail was rejected by the Juvenile Justice Board vide order dated 23.12.2019.

9. The petitioner assailed the aforesaid order dated 23.12.2019 in appeal vide Cr. Appeal No.2 of 2020/4 of 2020 before the learned 1st Additional District & Sessions Judge, Jehanabad, who vide impugned order dated 29.01.2020, upheld the order passed by the Juvenile Justice Board, Jehanabad and rejected the appeal preferred by the petitioner.

10. Learned counsel for the petitioner submitted that the first information report was lodged against unknown persons and there is no direct evidence against the petitioner. He contended that in course of investigation, no legal evidence has been collected against the petitioner. According to him, no witness has supported the allegation of theft against the



petitioner. He further contended that the petitioner is an innocent child, who has been a victim of a false accusation.

11. 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** while passing order on the application for bail of the petitioner.

12. 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.

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

14. 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 appellant is in bad association and has criminal antecedent also and if he will be released on bail, he may go in bad association and as such his release on bail will defeat the ends of justice. The appellate court has rejected his appeal on the aforesaid ground.



15. 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).

16. 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'."

17. 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.

18. 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 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 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.

19. For the reasons noted above, the impugned judgment dated 29.01.2020 passed in Cr. Appeal No.2/2020-4/2020 by learned 1st Additional District and Sessions Judge, Jehanabad arising out of Jehanabad P.S. Case No.593 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.

20. Accordingly, the impugned judgment dated 29.01.2020 passed in Cr. Appeal No.2/2020-4/2020 by learned 1st Additional District and Sessions Judge, Jehanabad is set aside. Consequently, the order dated 23.12.2019 passed in Jehanabad P.S. Case No.593 of 2019 by the Juvenile Justice Board, Jehanabad, is also set aside.

21. 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, Jehanabad in Jehanabad P.S. Case No.593 of 2019.

22. The revision application stands allowed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	04.07.2020
Transmission Date	04.07.2020

