

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.310 of 2020**

Arising Out of PS. Case No.-1356 Year-2019 Thana- NAWADA District- Nawada

1. A 1

2. A 2

... .. Petitioners

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Petitioner : Mr.Amresh Sinha, Advocate

For the Respondent : Dr. Mritunjay Kumar Gautam, APP

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

Date : 11-06-2020

Heard learned counsel for the parties via video conferencing.

2. Though the petitioners have given full description in the application, it would be inappropriate to disclose their 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’). They are being referred to in the cause title as A 1 and A 2.

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 order dated 15.02.2020 passed in Cr. App (J) No.04/2020 by learned Additional District & Sessions Judge-1st-cum-Special Judge, Nawada whereby appeal was dismissed against the order dated 20.12.2019 passed in Nawada Town P.S. Case No.1356 of 2019 registered under Section 25(1-B)A/26/35 of the Arms Act by the Juvenile Justice Board, Nawada, refusing prayer for bail of the petitioners.

5. The petitioners are lying in the Observation Home at Biharsharif Nalanda.

6. The Juvenile Justice Board vide order dated 09.12.2019 declared the petitioners juvenile on the basis of date of birth of the petitioners recorded in the records of Bihar School Examination Board.

7. As per the prosecution case, a countrymade revolver was recovered from the possession of the petitioner no.1.

8. The prayer for bail of the petitioners was rejected by the Juvenile Justice Board vide order dated 20.12.2019.



9. The petitioners assailed the aforesaid order dated 20.12.2019 vide Cr. Appeal(J) No.04 of 2020 before the Additional District & Sessions Judge-1st-cum-Special Judge, Nawada. The Special Court vide impugned order dated 15.02.2020 upheld the order passed by the Juvenile Justice Board, Nawada and rejected the appeal preferred by the petitioners.

10. It would be evident from order of the Juvenile Justice Board that the prayer for bail of the petitioners was rejected mainly on the ground that allowing the petitioners on bail would defeat the objects of the act. Further if the petitioners would be released, there is reasonable grounds for believing that they would come in association with known criminals. Their release would also expose them to moral, physical and psychological danger.

11. Learned counsel appearing for the petitioners submitted that neither the Juvenile Justice Board nor the Special Court has appreciated the ratio laid down by this Court in **Lalu Kumar & Ors. vs. The State of Bihar & Ors.** reported in **2019(4) PLJR 833**.

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 their release would expose them to moral, physical or psychological danger.

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

14. The power 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). In paragraphs 84 to 86 of the judgment this Court observed as follows:

“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'."

15. 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. The impugned order reveals 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 Court below in refusing the prayer for bail to the petitioners. There was no material before the Courts below to believe that the release of the petitioners were likely to bring them into association with any known criminals. There was also no material to come to the conclusion that release would expose the petitioners 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.

16. Therefore, in my opinion, the impugned order passed by the learned 1st Additional District & Sessions Judge-cum-Special Judge, Nawada in Cr. Appeal (J) No.4 of 2020 arising out of Nawada Town P.S. Case No. 1356 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.

17. Accordingly, the impugned order dated 15.02.2020 passed in Cr. App (J) No.04/2020 by learned Additional District & Sessions Judge-1st-cum-Special Judge,



Nawada is set aside. Consequently, the order dated 20.12.2019 passed by the Juvenile Justice Board, Nawada in Nawada Town P.S. Case No.1356 of 2019 is also set aside.

18. The petitioners are 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, Nawada in Nawada Town P.S. Case No.1356 of 2019.

19. The revision application stands allowed.

(Ashwani Kumar Singh, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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