

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.346 of 2020

Arising Out of PS. Case No.-344 Year-2018 Thana- PANCHRUKHI District- Siwan

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X2

... .. Petitioner

Versus

The State of Bihar

... .. Respondent

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Appearance :

For the Petitioner : Mr. Ranjeet Kumar, Advocate
For the Respondent : Mrs. Anita Kumari Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT
Date : 18-09-2020

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 X2.

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



24.01.2020 passed in Cr. Appeal (Juvenile) No.52 of 2019 by learned 1st Additional District and Sessions Judge, Siwan whereby the appeal was dismissed against the order dated 23.08.2019 passed in connection with J. Trial No.166 of 2016 arising out of G.R. Case No.7203 of 2019 corresponding to Panchrukhi P.S. Case No.344 of 2018 registered for the offences punishable under Sections 302, 216, 120B of the Indian Penal Code and section 27 of the Arms Act by the Juvenile Justice Board, Siwan, refusing the prayer for bail of the petitioner.

5. The Juvenile Justice Board, Siwan, vide order dated 04.07.2019, determined the age of the petitioner as 17 year, 9 months and 27 days. Hence, he was declared a juvenile in conflict with law on the date of occurrence.

6. The prosecution case is based on the written report submitted by one Amit Kumar Tiwary to the SHO Panchrukhi Police Station, Siwan in which he has stated that the deceased Sumit is his brother and was working as a clerk in Kamla Aditya Construction Company. On 28.11.2018 at Karori site of Kamla Aditya Construction Company, three persons came on motorcycle to the site and demanded extortion of Rs. 20 lakhs and threatened to kill him if he refuses to fulfill his demand and said that this is the order of Chandan Singh. He



further stated that in this regard a case was registered at Darunda Police Station and, during the course of investigation, photographs of three persons were shown by the police, which were identified by the employee working in the company as Rohit Kumar, Rahul Yadav, Binod Singh. Later, it was discovered that Amit Singh, who is nephew of Chandan Singh, also lives with these people. He further stated that he used to work as Supervisor in the said company. He further stated that on 09.12.2018, he went to the site to meet his brother. At around 3:00 p.m., his brother Sumit Kumar Tiwari and one JCB Operator, namely, Karn Kumar came out from the site to pick up some items from market by his motorcycle. In the meantime, six persons namely, Rohit Kumar Singh @ Sunny, Rahul Yadav, Binod Singh, Amit Singh and two unknown persons on two Apache motorcycles, surrounded his brother on the bridge about 100 meters away and started chattering. The informant also reached there. Rohit Kumar shot informant's brother Sumit in the head with pistol, which led to his death.

7. The petitioner was remanded in the present case on 21.01.2019. His prayer for bail was rejected by the Juvenile Justice Board vide order dated 23.08.2019.

8. The petitioner assailed the aforesaid order



dated 23.08.2019 in appeal vide Cr. Appeal (Juvenile) No.52 of 2019 before the learned 1st Additional District & Sessions Judge, Siwan, who vide impugned order dated 24.01.2020, upheld the order passed by the Juvenile Justice Board, Siwan and rejected the appeal preferred by the petitioner.

9. Learned counsel for the petitioner submitted that the petitioner is not named in the FIR. The petitioner has been falsely implicated in this case merely on the basis of suspicion. According to him, no incriminating article has been recovered from the conscious and physical possession of the petitioner. He further contended that there is no material available on the record to connect the petitioner with the alleged offence. He further contended that co-accused persons, namely, Sanjay Singh, Amit Kumar Singh, Amit Kumar, Manish Yadav and Binod Singh have been granted bail either by this Court or by the court below vide orders dated 23.07.2019, 17.05.2019, 23.10.2019, 20.03.2020 and 26.09.2019 passed in Cr. Misc. Nos. 15331 of 2019, 32816 of 2019, 58234 of 2019, 1574 of 2020 and B.P. No.791 of 2019 respectively. He contended that the petitioner was arrested in Pachrukhi P.S. Case No.96 of 2019 dated 16.04.2019. Thereafter, he continued in Siwan Jail itself.



10. He contended that neither the Juvenile Justice Board nor the appellate 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.

11. 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.

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

13. 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 released on bail, he may fall in bad association and as such his release on bail would defeat the ends of justice. The appellate court has upheld the order passed by the Juvenile Justice Board, Siwan.

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 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.

18. For the reasons noted above, the impugned judgment dated 24.01.2020 passed in Cr. Appeal (Juvenile) No.52 of 2019 by learned 1st Additional District and Sessions Judge, Siwan arising out of Panchrukhi P.S. Case No.344 of 2018 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 24.01.2020 passed in Cr. Appeal (Juvenile) No.52 of 2019 by learned 1st Additional District and Sessions Judge, Siwan is set aside. Consequently, the order dated 23.08.2019 passed in Panchrukhi P.S. Case No.344 of 2018 by the Juvenile Justice Board, Siwan, 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 Juvenile Justice Board, Siwan in Panchrukhi P.S. Case No.344 of 2018.

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 order, which has been dictated during the course of proceeding of the virtual court, shall be communicated to me on my email by the Senior Secretary.
- (ii) The corrected copy of the order shall be transmitted by me from my email id to the Senior 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 order duly signed by me shall be preserved in my residential office for documentation and future use, if any.
- (iv) Let a copy of the order be sent to Mr. Ranjeet Kumar, learned counsel for the petitioner also on his email.
- (v) Let steps be taken by the Senior Secretary/registry for up-loading of the present order without compromising with the norms of social distancing.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18.09.2020
Transmission Date	22.09.2020

