

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.791 of 2018

Arising Out of PS. Case No.-98 Year-2017 Thana- BAKHARI District- Begusarai

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Saurav Kumar @ Sahgal Pratap Singh @ Saurav Kumar Singh S/o Sushil Kumar Singh, under the guardianship of his natural father Sri Sushil Kumar Singh, R/o Vill.- Parihara, P.S.- Bakhri, District- Begusarai.

... .. Petitioner

Versus

The State Of Bihar

... .. Opposite Party

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with
CRIMINAL REVISION No. 798 of 2018

Arising Out of PS. Case No.-61 Year-2017 Thana- BAKHARI District- Begusarai

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Saurav Kumar @ Sahgal Pratap Singh (under the guardianship of Sushil Kumar Singh) Son of Sushil Kumar Singh, resident of Village- Parihara, P.S.- Bakhari (Parhihara O.P.), District- Begusarai.

... .. Petitioner

Versus

The State Of Bihar

... .. Opposite Party

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Appearance :

(In CRIMINAL REVISION No. 791 of 2018)

For the Petitioner : M/s. Arun Kumar, Shankar Kumar Choudhary

For the Respondent : Mr. Akhileshwar Dayal, A.P.P.

For the Informant : Mr. Ravindra Kumar, Adv.

(In CRIMINAL REVISION No. 798 of 2018)

For the Petitioner : M/s Arun Kumar, Shankar Kumar Choudhary

For the Respondent : Mr. Manish Kumar 2, A.P.P.

For the Informant : Mr. Ravindra Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

CAV JUDGMENT

Date : 07-10-2020

1. Both the above stated petitions were heard together as petitioner was made accused in Bakhri P.S. Case No. 98 of 2017 registered under Sections 302, 120B/34 of the Indian Penal Code and 27 of the Arms Act as well as in Bakhari P.S. Case No.



61 of 2017 registered under Sections 307/34 of the Indian Penal Code and 27 of the Arms Act. In both the above stated cases petitioner was declared juvenile and enquiry under Section 15(3) of Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as “Act 2015”) was conducted and he was found mentally fit to understand the nature of offences which are allegedly have been committed by the petitioner and accordingly, both the above stated cases were sent to Children’s Family Court, Begusarai for trial in accordance with law.

2. Petitioner prayed for bail in both the above stated cases. However, the learned Additional Sessions Judge-Ist cum Special Judge, Begusarai vide order dated 27.04.2018 passed in J.J.C.P. Case No. 1 of 2018 arising out of Bakhari P.S. Case No. 61 of 2017 rejected the bail application filed on behalf of the petitioner and similarly, vide order dated 11.04.2018 passed in Cr. Appeal No. 20 of 2018, learned Sessions Judge, Begusarai affirmed the order dated 08.01.2018 passed by Principal Member, Juvenile Justice Board, Begusarai in connection with Juvenile Justice Board Case No. 87 of 2017 arising out of Bakhri P.S. Case No. 98 of 2017 by which learned Principal Magistrate, Juvenile Justice Board, Begusarai had rejected the bail prayer of the petitioner.



3. Since in both the above stated criminal revision petitions, similar question of law is involved and, therefore, both the above stated criminal revision petitions are being disposed of by this common order on the stage of admission stage itself with consent of all the parties.

4. In Bakhri P.S. Case No. 98 of 2017 petitioner and seven FIR named and three unknown persons were made accused and it is alleged in the ferdbeyan of Bakhri P.S. Case No. 98 of 2017 that petitioner opened fire which hit on the head of the deceased whereas other named accused opened fire causing firearm injury on different parts of body of the deceased.

5. In Bakhari P.S. Case No. 61 of 2017, petitioner and some others were made accused and informant of the aforesaid case claimed in his ferdbeyan that petitioner shot fire causing firearm injury on his chest.

6. Petitioner surrendered before the court of learned Magistrate on 17.05.2017 in Bakhri P.S. Case No. 61 of 2017 and subsequently, he was remanded in Bakhri P.S. Case No. 98 of 2017. Petitioner claimed himself juvenile and accordingly, his cases were sent to Juvenile Justice Board, Begusarai for enquiry. The learned Juvenile Justice Board having conducted enquiry regarding the juvenility of the petitioner found the petitioner aged



about 16 years 10 months 17 days and accordingly, declared him juvenile. However, learned Juvenile Justice Board conducted an enquiry under Section 15 of Act 2015 and vide order dated 7.5.2018 found him mentally and physically competent to understand the nature of offences which are said to have been committed by the petitioner. However, before completion of enquiry under Section 15 of Act 2015, petitioner filed bail petition in Bakhri P.S. Case No. 98 of 2017 before the Juvenile Justice Board, Begusarai which was rejected by the learned Principal Magistrate, Juvenile Justice Board, Begusarai vide order dated 08.01.2018 against which the petitioner preferred Cr. Appeal No. 20 of 2018 which was dismissed by the learned Sessions Judge, Begusarai vide order dated 11.04.2018. Similarly, petitioner filed bail petition in Bakhri P.S. Case No. 61 of 2017 vide J.J.C.P. Case No. 1 of 2018 for grant of bail but the same was dismissed. It is pertinent to note here that in above stated J.J.C.P. Case No. 1 of 2018, petitioner was declared juvenile as well as found mentally and physically fit by the order dated 16.01.2018 passed by learned Principal Magistrate, Juvenile Justice Board. After the aforesaid orders petitioner filed above stated two separate criminal revision petitions before this court.



7. Learned counsel appearing for the petitioner in both the criminal revision petitions would submit that petitioner is in custody for more than three years whereas a juvenile can be detained only up to three years in custody and, therefore, detention of the petitioner is illegal and he should be released on bail. In support of his above contention, he referred Section 18 of Act 2015. He would further submit that no juvenile can be punished with sentence to death or for life imprisonment as provided under Section 21 of the Act 2015 and, therefore, in the aforesaid circumstances, petitioner should be released on bail in both the above stated cases. In support of his contention, he placed his reliance on the case of *Mohd. Feroz Khan @ Feroz v. State of Andhra Pradesh* reported in *2016 Criminal Law Journal 790* and case of *Hakkim v. State Tr. Deputy Superintendent of Police With Sarfudheen and another v. State. With Samsudheen v. State* reported in *2015 Criminal Law Journal 275*. Learned counsel of the petitioner would further submit that enquiry under Section 15 of the Act, 2015 has not been conducted by the Juvenile Justice Board, Begusarai and, therefore, on the above stated grounds, petitioner is entitled to get the benefit of bail.

8. On the other hand, learned counsel appearing for the informant vehemently opposed the prayer and refuted the



submissions advanced on behalf of the petitioner. Continuing his submission, he would submit that petitioner is said to be main assailant in both the above stated cases and apart from this, petitioner does have criminal antecedent. He would further submit that Section 21 of Act 2015 does not debar the trial court to sentence a juvenile for life imprisonment. He would further submit that admittedly, the offences, allegedly, committed by the petitioner come under the definition of heinous offence and for heinous offence, the minimum punishment is up to seven years and, therefore, in the aforesaid circumstance, the impugned orders passed by respective learned courts below should be affirmed and both the above stated revision petitions should be dismissed. He would further submit that in both the above stated cases, the respective learned courts below have conducted an inquiry under Section 15(3) of the Act 2015 and, therefore, it cannot be said that the enquiry under Section 15(3) of the Act 2015 has not been conducted by the respective courts below.

9. Having heard the contentions of both the parties, I went through the records along with lower court records of Bakhri P.S. Case No. 98 of 2017.

10. It is not in dispute that according to prosecution case, in Bakhri P.S. Case No. 98 of 2017, petitioner is said to have



opened fire on the head of the deceased whereas his associates opened fire on various parts of body of the deceased and similarly, in Bakhari P.S. Case No. 61 of 2017 petitioner is said to have opened fire on the informant causing firearm injury on his chest.

11. Section 302 of the I.P.C. makes the offence of murder punishable with death or imprisonment for life and also with fine. Similarly, Section 307 of the I.P.C. makes the offence of attempt to murder punishable with imprisonment which may extend to ten years with fine as well as if hurt is caused, the offence is made punishable either to imprisonment for life or to such punishment as stated above.

12. The Act 2015 categorizes offences in three categories. Section 2(33) of the Act 2015 defines “heinous offences” and says that heinous offences includes the offences for which the minimum punishment under the Indian Penal Code (45 of 1860) or any other law for the time being in force is imprisonment for seven years or more. Section 2(45) of Act 2015 defines “petty offences” and says that petty offences includes the offences for which the maximum punishment under the Indian Penal Code (45 of 1860) or any other law for the time being in force is imprisonment up to three years. Similarly, Section 2(54) of Act 2015 defines “serious offences” and says that serious offences



includes the offences for which the punishment under the Indian Penal Code (45 of 1860) or any other law for the time being in force, is imprisonment between three to seven years.

13. Admittedly, the offence of Bakhri P.S. Case No. 98 of 2017 comes under the category of heinous offences. So far as offence of Bakhri P.S. Case No. 61 of 2017 is concerned, admittedly, the same has been registered under Sections 307/34 of the I.P.C. and 27 of the Arms Act. As I have already stated that Section 307 of the I.P.C. makes the offence punishable with imprisonment which may extend to ten years with fine and if hurt is caused, the offence is made punishable either to imprisonment for life or to such punishment as stated above. Section 307 of the I.P.C. does not provide minimum punishment and the punishment under Section 307 of the I.P.C. can be awarded up to ten years if the hurt is not caused and if the hurt is caused the punishment can be awarded up to imprisonment for life. Similarly, Section 27 of the Arms Act provides minimum punishment up to three years. Therefore, the offence committed under Section 27 of the Arms Act comes under the definition of serious offence but so far as the offence committed under Section 307 of the I.P.C. is concerned, it is not clear as to under which category the offence of Section 307 I.P.C. would come.



14. In *Shilpa Mittal v. State (NCT of DELHI) and another* reported in (2020) 2 SCC 787, the question arose before the Hon'ble Supreme Court as to whether an offence prescribing a maximum sentence of more than seven years imprisonment but not providing any minimum sentence or providing a minimum sentence of less than seven years can be considered to be a heinous offence within the meaning of Section 2(33) of the Act. In the aforesaid case, the Hon'ble Apex Court noticed that if the definitions of offences i.e. petty, serious and heinous are read literally there is one category of offences which is not covered by the Act 2015 and having noticed the above stated lacuna in the Act, the Hon'ble Apex Court at para 35 of the aforesaid judgment held as follows:-

35. Though we are of the view that the word "minimum" cannot be treated as surplusage, yet we are duty-bound to decide as to how the children who have committed an offence falling within the 4th category should be dealt with. We are conscious of the views expressed by us above that this Court cannot legislate. However, if we do not deal with this issue there would be no guidance to the Juvenile Justice Boards to deal with children who have committed such offences which definitely are serious, or may be more than serious offences, even if they are not heinous offences. Since two views are possible we would prefer to take a view which is in favour of children and, in our opinion, the legislature should take the call in this matter, but till it does



so, in exercise of powers conferred under Article 142 of the Constitution, we direct that from the date when the 2015 Act came into force, all children who have committed offences falling in the 4th category shall be dealt with in the same manner as children who have committed “serious offences”.

Furthermore, Hon’ble Apex Court at para 36 of the aforesaid judgment held as follows:-

36. *In view of the above discussion we dispose of the appeal by answering the question set out in the first part of the judgment in the negative and hold that an offence which does not provide a minimum sentence of 7 years cannot be treated to be an heinous offence. However, in view of what we have held above, the Act does not deal with the 4th category of offences viz. offence where the maximum sentence is more than 7 years’ imprisonment, but no minimum sentence or minimum sentence of less than 7 years is provided, shall be treated as “serious offences” within the meaning of the Act and dealt with accordingly till Parliament takes the call on the matter.*

In view of the aforesaid decision, it is obvious that offence of Section 307 of the I.P.C. comes under the definition of serious offence because for the offence of Section 307 of the I.P.C. maximum punishment has been provided but the aforesaid section does not speak about the minimum punishment for the offence of Section 307 of the I.P.C. Therefore, it is explicit clear that the



offence committed in Bakhari P.S. Case No. 61 of 2017 comes under the category of serious offence.

15. Section 14(1) of Act 2015 says that if a child, allegedly, to be in conflict with law is produced before the Board, the Board shall hold an enquiry in accordance with the provisions of this Act and may pass such orders in relation to such child as it deems fit under Sections 17 and 18 of the Act. The aforesaid provision goes to show that whenever a child in conflict with law produced before the Board, it is mandatory duty of the Board to hold enquiry and pass such orders which are deemed to be fit under Section 17 and 18 of the Act. Furthermore, Section 14(3) of the Act says that a preliminary assessment in case of heinous offences under Section 15 shall be disposed of by the Board within a period of three months from the date of first production of the child before the Board. Section 14(5)(f)(ii) says that the child above the age of 16 years as on the date of commission of an offence shall be dealt with in the manner prescribed under Section 15 of the Act.

16. Section 15 of the Act 2015 says that in case of a heinous offence alleged to have been committed by a child, who has completed or is above the age of 16 years, the Board shall conduct a preliminary assessment with regard to his mental and



physical capacity to commit such offence, ability to understand the consequences of the offence and the circumstances in which he, allegedly, committed the offence, and may pass an order in accordance with the provisions of sub-section (3) of Section 18. Section 18(3) of the Act 2015 says that where the Board after preliminary assessment under Section 15 pass an order that there is a need for trial of the said child as an adult, then the Board may order transfer of trial of the case to the Children's Court having jurisdiction to try such offences. Section 18 deals with the order which can be passed against a child in conflict with law. However, perusal of section 18(1) of the Act 2015 goes to show that aforesaid provision is applicable to petty offences or a serious offences or a child below the age of 16 years who has committed a heinous offence and the aforesaid Section 18 of Act 2015 is not applicable in respect of a child who is more than 16 years and has committed heinous offence.

17. Admittedly, petitioner, on enquiry by the learned Juvenile Justice Board, was found more than 16 years at the time of alleged occurrence and, therefore, in my view, Section 18 of the Act is not applicable in Bakhari P.S. Case No. 98 of 2017. So far as Bakhari P.S. Case No. 61 of 2017 is concerned, Section 18 of the Act is fully applicable because the offence, allegedly,



committed in the aforesaid case comes under the category of serious offences.

18. Section 12 of the Act 2015 makes provision of bail for a child in conflict with law and Section 12 of the Act goes to show that a child in conflict with law is entitled to get the privilege of bail unless there appears to be reasonable grounds for believing that release is likely to bring that child into association with any known criminals or expose the said child to moral, physical or psychological danger or the child's release would defeat the ends of justice. The aforesaid provision makes the grant of bail mandatory to a child in conflict with law but the bail of a child in conflict with law can be rejected, if the court finds the circumstances and facts as stated above.

19. Admittedly, petitioner has been made accused in two cases out of which one case is for heinous offence and other case is for serious offence.

20. Admittedly, petitioner is in custody for more than three years. Therefore, question arises as to whether petitioner can be detained in the above stated cases for more than three years or not. As I have already stated that Section 18 of the Act 2015 is not applicable in the case of a child above the age of 16 years, if the said child commits a heinous offence. Section 19 of the Act 2015



says that after the preliminary assessment under Section 15 of the Act, the Children's Court may conduct the trial of a child above 16 years of age as an adult and may pass appropriate orders after trial subject to the provisions of Section 19 and Section 21 of the Act. Furthermore, Section 19(3) of the Act 2015 says that the Children's Court shall ensure that the child who is found to be in conflict with law is sent to a place of safety till he attains the age of 21 years and, thereafter, the person shall be transferred to a jail. The aforesaid Section 19(3) of the Act reflects that a child conflict with law can be detained in safe custody and thereafter after attaining the age of 21 years, the said child in conflict with law can be sent to a jail.

21. Section 21 of the Act 2015 puts a rider that a child in conflict with law cannot be sentenced to death or for life imprisonment without the possibility of release. For better appreciation of the aforesaid Section 21 of the Act 2015, I would like to reproduce Section 21 of the Act 2015 which runs as follows:-

***21. Order that may not be
passed against a child in conflict with law- No child
in conflict with law shall be sentenced to death or for
life imprisonment without the possibility of release,
for any such offence, either under the provisions of***



this Act or under the provisions of the Indian Penal Code (45 of 1860) or any other law for the time being in force.

22. The bare perusal of aforesaid provision goes to show that the word “ without the possibility of the release” has been used in the aforesaid section with certain object. The aforesaid provision goes to show that no child in conflict with law can be sentenced for his whole life. The aforesaid provision reflects that a child above the age of 16 years can be sentenced for life imprisonment but with possibility of release, meaning thereby, no child above the age of 16 years can be sentenced for imprisonment of life till his death but it cannot be said that a child above the age of 16 years cannot be sentenced for imprisonment for life. Here, I would like to mention that Chapter-XXXII sub chapter E of Code of Criminal Procedure, 1973 (hereinafter referred to as “Code 1973”) makes the provision of suspension, remission and commutation of sentences and the aforesaid sub chapter E of Chapter XXXII of Code 1973 gives power of suspension, remission and commutation of the sentences to concerned government. Therefore, if the provisions of Chapter XXXII sub Chapter E of Code 1973 is read with Section 21 of the Act 2015, it is explicit clear that the word “without the possibility of release” has purposely been used in Section 21 of the Act 2015 because



even if a child in conflict with law who has completed or is above the age of 16 years, is sentenced for life imprisonment then also, the Government has power to suspend, remit or commute his sentence and, therefore, in my view, it cannot be said that a child in conflict with law, who has completed or is above the age of 16 years on the date of occurrence, cannot be sentenced for more than three years even if he has committed a heinous offence.

23. So far as Bakhri P.S. Case No. 61 of 2017 is concerned, according to Section 18 of the Act 2015, petitioner cannot be detained for more than three years and, therefore, I am in agreement with the argument advanced by learned counsel of the petitioner to the above stated extent but so far as the offence of Bakhri P.S. Case No. 98 of 2017 is concerned, petitioner can be detained for more than three years because the offence, allegedly, committed by the petitioner in Bakhri P.S. Case No. 98 of 2017 comes under the category of heinous offences and petitioner was found above the age of 16 years on the alleged date of occurrence. However, Section 12 of the Act 2015 mandates that child in conflict with law shall be released on bail subject to rider provided in the aforesaid section itself. Section 12 of the Act 2015 does not make any difference between heinous offences, serious offences and petty offences and in all the categories of offences a child in



conflict with law is entitled to bail unless the proviso is attracted against him.

24. As I have already stated that respective learned courts below conducted an enquiry under Section 15 of the Act 2015 and transferred both the cases of the petitioner to Children's Court, Begusarai and, therefore, I am not in agreement with the submission of learned counsel of the petitioner that the enquiry under Section 15(3) of the Act, 2015 was not conducted by the respective courts below.

25. Bail of a child in conflict with law can only be rejected, if it is found that his release would bring him into the association of known criminals or expose him to moral, physical or psychological danger or his release would defeat the ends of justice. In Bakhri P.S. Case No. 98 of 2017, the probationary officer submitted social investigation report of the petitioner and averred in the said report that it would not be proper to keep the petitioner with his family. The probationary officer has based his above finding on the ground that father of the petitioner was also in custody. However, the perusal of report of probationary officer dated 12.08.2017 goes to show that there was dispute between family of the petitioner as well as prosecution party. No doubt, the report of probationary officer assumes great importance but the



report of probationary officer dated 12.08.2017 itself discloses that occurrence of Bakhari P.S. Case No. 98 of 2017 occurred on account of dispute between the prosecution party and family members of petitioner. However, the report of probationary officer dated 12.08.2017 does not say that release of the petitioner would bring him into association of known criminals or the offence of Bakhari P.S. Case No. 98 of 2017 was committed by an organized gang of which petitioner was also a member and his release would bring him into association of members of the said gang. Admittedly, petitioner has been detained since last three and half years and furthermore, there is nothing on the record to show that release of the petitioner would expose him to moral, physical or psychological danger. I also find that petitioner happens to be student and if he is further detained, his entire career would suffer.

26. Accordingly, both the above stated revision petitions are allowed and the impugned orders passed by respective courts below are, hereby, set aside. Accordingly, petitioner, above named, is directed to be released on bail on furnishing bail bonds of Rs. 10,000/-(ten thousand) with two sureties of like amount each to the satisfaction of concerned courts in connection with Bakhari P.S. Case No. 98 of 2017 and Bakhari P.S. Case No. 61 of 2017 respectively.



27. Office to send the copy of this order to courts below
in both the above stated cases without any delay.

(Hemant Kumar Srivastava, J)

shahzad/-

AFR/NAFR	AFR
CAV DATE	21.09.2020
Uploading Date	07.10.2020
Transmission Date	07.10.2020

