

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.876 of 2019

Arising Out of PS. Case No.-658 Year-2018 Thana- KHAJANCHI HAT District- Purnia

BRAJESH SINGH @ BRAJESH KUMAR SINGH Son of Purushotam Singh
Through his natural Guardians, namely, Madhu Devi Who is mother R/o
Mohalla - Basant Bihar, Near Newalal Chowk, Lalganj, P.S.- K. Hat, District -
Purnea.

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Sanjay Kumar Singh
For the Respondent/s : Mr.Pranav Kumar

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL ORDER

- 4 28-05-2020 1. The present petition has been filed challenging the order dated 24.05.2019, passed by learned 1st Additional Sessions Judge-cum-Special Judge-Children Court, Purnea in connection with K. Hat PS case no. 658 of 2018 arising out of Special (Kishore) Case no. 07 of 2019/ C.I.S. no. 07 of 2019, registered for the offences punishable under Sections 302, 224, 120B/34 of Indian Penal Code and 27 of Arms Act.
2. The case of the prosecution, according to the written report of the informant dated 19.09.2018 is that on the said date, he got a telephonic information that the petitioner herein and other co-accused persons, named in the F.I.R., who were residing in the Observation Home at Purnea have committed murder of House father namely Bijendra Kumar and



that of juvenile Saroj Kumar, whereafter they had fled away from the Observation Home, Purnea. The said Bijendra and Saroj Kumar were taken to the Sadar Hospital Purnea for treatment by the Security Guard and when the informant reached the hospital, after being informed by the Superintendent, then he found that the said persons were lying, laced in blood and he was told by the doctor at Sadar hospital, Purnea that both have died. It is the allegation of the informant that all the five accused persons including the petitioner herein had fired gun shots on the aforesaid two deceased persons with intention to kill them, which in turn has resulted in their death and after threatening the Security Guard, the said accused persons have also fled away from the Observation Home, Purnea.

3. At this juncture, it may be relevant to mention that the petitioner was declared juvenile in connection with G.R. case no. 3365 of 2018 (arising out of K. Hat PS case no. 658 of 2018) by the learned Juvenile Justice Board, Purnea vide order dated 08.03.2019 and his age was determined as 17 years, 1 month and 4 days as on the date of occurrence i.e. 19.09.2018. It appears that thereafter, the petitioner had filed a regular bail petition dated 08.05.2019 before the learned court of 1st



Additional Sessions Judge-cum-Special Judge-Children Court, Purnea, however the prayer of the petitioner for grant of bail was rejected by an order dated 24.05.2019, which has been assailed in the present proceedings. The prayer of the petitioner for grant of bail has been rejected by the learned court below on the ground that a perusal of the Social Investigation Report shows that the petitioner lives in association with unknown criminal and he has got criminal antecedent as also there is direct allegation against the petitioner of committing murder of House Father Bijendra Kumar and a juvenile namely Saroj Kumar, inside the Observation Home at Purnea.

4. The learned counsel for the petitioner has submitted that the petitioner has been declared juvenile vide order dated 08.03.2019 and is languishing in custody since 28.09.2018. It is further submitted by the learned counsel for the petitioner that a bare perusal of paragraphs no. 10 and 14 of the case diary would show that the independent witnesses have not taken the name of the petitioner as the person who had fired gun shots resulting in death of aforesaid two persons, however the person who is stated to have shot dead the said two persons is the co-accused person namely Subham Kushwaha and as far as the other accused persons, including the petitioner herein are



concerned, they are stated to be accomplice of the said co-accused person namely Subham Kushwaha. It is also submitted by the learned counsel for the petitioner that there is no eye-witness of the occurrence in question and nobody has actually seen the petitioner firing gun shots on any of the deceased persons. Lastly, it is submitted that the co-accused person namely Karn Kumar @ Raja @ Kishore Karn @ Kishore Karn Kumar has already been granted the privilege of regular bail by a co-ordinate Bench of this Court vide order dated 05.12.2019, passed in Cr. Rev. no. 1445 of 2019.

5. *Per contra*, the learned counsel appearing for the opposite party-State of Bihar has submitted that the petitioner is alleged to have committed a grave offence i.e. double murder and moreover, he is having a bad criminal antecedent, inasmuch as he is an accused in three other cases. It is further submitted that the Social Investigation Report is also against the petitioner and the police has also filed a charge-sheet whereupon the learned court below has taken cognizance of the offence alleged, hence it is submitted that the petitioner does not deserve the privilege of bail.

6. The Law regarding power and scope of ***Section 12 of the Juvenile Justice Act*** is well settled. In this regard, it



would be relevant to reproduce paragraphs no. 84 to 86 of a judgment rendered by learned Division Bench of this Court in the case of ***Lalu Kumar and others v. the State of Bihar and others, reported in 2019(4) PLJR 833*** herein below:-

“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'."

7. The learned Division Bench in the aforesaid judgment rendered in the case of ***Lalu Kumar and others (supra)*** has also held that seriousness of the offence alleged is not a ground for rejection of the bail of a child in conflict with law? The Division Bench further 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.

8. The impugned orders reveal that the seriousness of the allegation prevailed upon the mind of the Courts-below in refusing the prayer for bail to the petitioner and other instances referred, consistent with the proviso to Section 12, are not applicable because there was no material before the Courts below to believe that the release of the petitioner was likely to bring the petitioner into association with any known criminals. There is no material to come to the conclusion that release would expose the petitioner to moral, physical or psychological danger, nor the Courts below have assigned any reason that in the event of grant of bail the ends of justice would be defeated.

9. Having regard to the facts and circumstances of the case, considering the submissions made by the learned counsel for the petitioner, taking into account the fact that there is no eye-witness to the occurrence and moreover, the independent witnesses have named the co-accused person Subham Kushwaha to be the person who had fired gun shots



at the deceased persons resulting in their death and further considering the parity of the case of the petitioner with that of the co-accused person who has already been granted regular bail by a co-ordinate Bench of this Court, this Court is of the view that the impugned order dated 24.05.2019, passed by learned 1st Additional Sessions Judge-cum-Special Judge-Children Court, Purnea is not sustainable in the eyes of law since the same is *de hors* the aim and objects of Juvenile Justice Act especially Section 12 thereof. Accordingly, the order dated 24.05.2019, passed by learned 1st Additional Sessions Judge-cum-Special Judge-Children Court, Purnea in connection with K. Hat PS case no. 658 of 2018 is hereby set aside and the petitioner herein is directed to be released from the remand home on him furnishing bail bond of Rs. 10,000/- with two sureties of the like amount each to the satisfaction of learned 1st Additional Sessions Judge-cum-Special Judge-Children Court, Purnea with a condition that one of the bailors of the petitioner shall be his father/ mother who at the time of filing of the bonds, shall also given an undertaking that he/ she will take care of the petitioner and in case, the petitioner do not act as per his/ her advice, he/ she shall report the matter to the officer-in-charge of the concerned police



station and further during the period of bail, the petitioner will
be under the supervision of concerned Probation Officer.

10. The petition stands allowed on the aforesaid terms.

(Mohit Kumar Shah, J)

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