

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.919 of 2019

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

XX

... .. Petitioner

Versus

The State Of Bihar

... .. Respondent

Appearance :

For the Petitioner/s : Mr.Sunil Kumar Pathak, Adv.
For the Respondent/s : Mr.Ramchandra Sahni, APP

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 19-06-2020

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 XX.

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 07.06.2019 passed by the learned 1st Additional Sessions Judge-cum-Special Judge



(Children Court), Purnea in Special Kishor 06 of 2019/CIS-06 of 2019 whereby the prayer for bail of the petitioner has been rejected.

5. At the outset, it would be relevant to note that against the order granting or refusing bail passed the Children's Court, an appeal under Section 101(5) of the Act of 2015 would be maintainable. The petitioner has erroneously filed the instant application as a revision under Section 102 of the Act of 2015. Under normal circumstances, this Court would have declined to hear the application in its present form. However, under extraordinary situation since hearing of extremely urgent matters are being taken up through video conferencing due to COVID-19 Pandemic under the orders of Hon'ble the Chief Justice, this Court is taking up the matter treating it to be an appeal against the order dated 07.06.2019 passed by the learned 1st Additional Sessions Judge-cum-Special Judge (Children Court), Purnea in Special Kishor 06 of 2019/CIS-06 of 2019. However, the order passed in this case shall not be treated as a precedent to entertain the revision application against order granting or refusing bail passed by the Children's Court.

6. The petitioner is lying in the place of safety, at Sheikhpura.



7. The Juvenile Justice Board, Purnea, vide order dated 24.04.2019, declared the petitioner a juvenile in conflict with law by assessing his age as 17 years 29 days and by the same order, the Board transferred his case to the Children's Court as the offence alleged to have been committed by him came in the category of heinous offence and the Board was of the opinion that the petitioner had mental and physical capacity to commit the alleged offence and the ability to understand the consequences of the offence.

8. The prosecution case is that on 19.09.2018 Md. Aahshanul Haque, Incharge Superintendent of Observation Home, Purnea got a telephonic information that the petitioner and four others, who were residing in the Observation Home, Purnea as Juvenile in conflict with law have committed murder of house father and one juvenile and fled away from the Observation Home.

9. The petitioner filed an application for bail after his transfer to the Children's Court, which was rejected vide order dated 07.06.2019.

10. Learned counsel for the petitioner submitted that the FIR has been registered on telephonic information. There is no eye-witness to the occurrence nor any incriminating article has been recovered from the possession of the petitioner.



11. He submitted that the Children's Court did not appreciate the ratio laid down by this Court in **Lalu Kumar & Ors. vs. The State of Bihar & Ors.** reported in **2019(4) PLJR 833** and rejected the application taking into consideration the gravity of the offence.

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.

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 Children's Court that the prayer for bail of the petitioner was rejected on the ground of involvement of the petitioner in the commission of double murder in the observation home.

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 only the seriousness of the allegation has been made the ground for rejecting the application for bail of the petitioner.

19. There is no appreciation of the proviso to sub-section (1) of Section 12 of the Act of 2015 and there is no finding that release would expose the petitioner to moral, physical or psychological danger. The Court below has also not assigned any reason that in the event of grant of bail the ends of justice would be defeated.



20. For the reasons noted above, the impugned order dated 07.06.2019 passed by the learned 1st Additional Sessions Judge-cum-Special Judge- Children Court, Purnea in Special Kishor- 06 of 2019/ CIS-06 of 2019 arising out of K. Hat P.S. Case No. 658 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.

21. Accordingly, the impugned order dated 07.06.2019 passed by the learned 1st Additional Sessions Judge-cum-Special Judge- Children Court, Purnea in Special Kishor- 06 of 2019/ CIS-06 of 2019 is set aside.

22. 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 the court below.

23. The application stands allowed.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	22.06.2020
Transmission Date	22.06.2020

