

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.901 of 2019

Arising Out of PS. Case No.-480 Year-2018 Thana- DUMRA District- Sitamarhi

RAVI SHANKAR @ SATYAM Son of Late Bipin Singh Resident of Village- Mahesha Farakpur, P.S.- Runnisaidpur, District- Sitamarhi through his mother and natural Guardian Nutan Devi (Female), aged about-46 years, Wife of Late Bipin Singh, Resident of Village- Mahesha Farakpur, P.S.- Runnisaidpur, District- Sitamarhi.

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Respondent/s

Appearance :

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

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL ORDER

- 3 22-05-2020 1. Heard the learned counsel for the petitioner, Sri Puspendra Kumar Singh and the learned counsel for the opposite party- State of Bihar, Sri Sanjay Kumar.
2. The instant revision application is directed against the order dated 18.04.2019, passed by Sri Virendra Pratap Singh, the learned 1st Additional Sessions Judge-cum-Special Judge (Children Court), Sitamarhi in Cr. Appeal no. 07 of 2019/ 06 of 2019, whereby and whereunder the learned 1st Additional Sessions Judge has dismissed the appeal filed by the petitioner and confirmed the order dated 21.12.2018, passed by the learned Principal Magistrate, Juvenile Justice Board, Sitamarhi in J.J. Board case no. 1502 of 2018 (686 of 2019) arising out of Dumra



PS case no. 480 of 2018, registered for the offence under Sections 25(1-b)A, 26, 35 of Arms Act whereby and whereunder, the learned Juvenile Justice Board has refused to grant bail to the petitioner.

3. The brief facts of the case are that upon a secret information received by the informant on 27.11.2018 at about 5.45 pm, the informant along with armed forces had arrived at Azamgarh Railway Gumti, whereafter they had caught two persons coming on Apache motorcycle who disclosed their names as Ravi Shanker @ Satyam (petitioner herein) and Aman Raj @ Sonu and upon search of their body, one semi automatic pistol and two cartridges were recovered.

4. It may be relevant to state that the petitioner has been declared to be a juvenile by the learned Juvenile Justice Board, Sitamarhi, inasmuch as his age has been determined as 16 years, 10 months and 23 days on the alleged date of occurrence i.e. 27.11.2018. The petitioner is stated to have filed an application for grant of bail before the learned Juvenile Justice Board, Sitamarhi, however the same was rejected by an order dated 21.12.2018. Thereafter, the petitioner had filed a Criminal Appeal before the learned court of 1st Additional Sessions Judge-cum-Special Judge (Children Court), Sitamarhi



bearing Cr. Appeal no. 07 of 2019/06 of 2019 and the learned court of 1st Additional Sessions Judge-cum-Special Judge (Children Court), Sitamarhi, by the impugned order dated 18.04.2019 has been pleased to reject the prayer of the petitioner for grant of bail on the grounds that the petitioner is named in the F.I.R., arms and ammunitions have been recovered from his possession, there are two other criminal cases pending against him, the atmosphere outside the Observation Home is not conducive and if the petitioner is released on bail, he will come in association with bad elements of the society and also with criminals which shall damage the moral, physical and psychology of the petitioner, as such the release of the petitioner would defeat the ends of justice.

5. The learned counsel for the petitioner has submitted that the petitioner is innocent and is languishing in custody since 28.11.2018, despite having been declared juvenile by the Juvenile Justice Board by an order dated 11.12.2018. It is further submitted that the petitioner is accused in two other cases but he is on bail in both the said two cases. Lastly, it is submitted that a bare perusal of the Social Investigation Report dated 18.12.2018, annexed to the case diary would show that upon inquiry made from the neighbours of the petitioner, it has



transpired that the father of the petitioner has died and the petitioner has started living with his mother, after the marriage of his sister whereas in the past, he used to stay outside for the purposes of his education. In the said report, it has also been stated that the petitioner can be given the benefit of counselling, proper guidance and social care.

6. *Per contra*, the learned counsel appearing for the opposite party-State of Bihar has submitted that the petitioner was caught red-handed and arms/ ammunitions were recovered and moreover, the petitioner is having a bad antecedent, hence the petitioner should not be granted the privilege of regular bail.

7. 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'."

8. 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.

9. Having regard to the facts and circumstances of the case, the submissions advanced by the learned counsel for the petitioner, considering the fact that the petitioner is languishing in custody since 28.11.2018, he is a juvenile and has already been suitably punished vis-a-vis the gravity of the offence committed by him, this Court finds that the impugned orders



dated 21.12.2018 and 18.04.2019 are not sustainable in the eyes of law being not consistent with the aims and objects of the Juvenile Justice Act, especially Section 12 thereof. Accordingly, the order dated 21.12.2018, passed by the learned Principal Magistrate, Juvenile Justice Board, Sitamarhi in J.J. Board case no. 1502 of 2018 (686 of 2019) arising out of Dumra PS case no. 480 of 2018 and the order dated 18.04.2019, passed by the learned 1st Additional Sessions Judge-cum-Special Judge (Children Court), Sitamarhi in Cr. Appeal no. 07 of 2019/06 of 2019 are set aside and consequently, the petitioner 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 the learned Principal Magistrate, Juvenile Justice Board, Sitamarhi in connection with J.J. Board case no. 1502 of 2018 (686 of 2019) arising out of Dumra PS case no. 480 of 2018 (G.R. no. 5067 of 2018) subject to the 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 does 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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