

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1547 of 2019

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

A Petitioner

Versus

The State Of Bihar Respondent

Appearance :

For the Petitioner : Mr. Pramod Kumar Singh, Advocate

For the Respondent : Mr. Sanjay Kumar Tiwary, APP

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT
Date : 11-06-2020

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 A.

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 05.11.2019 passed in Cr. Appeal No.37/2019 by learned Additional District & Sessions Judge-1st-cum-Special Judge, Purnea whereby the appeal was dismissed against the order dated 31.07.2019 passed in K. Hat P.S. Case No.658 of 2018 registered under Sections 302 and 224 read with 34 of the Indian Penal Code and Section 27 of the Arms Act by the Juvenile Justice Board, Purnea, refusing prayer for bail of the petitioner.

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

6. The Juvenile Justice Board, Purnea vide order dated 29.07.2019 declared the petitioner a juvenile in conflict with law on the basis of its record in GR1293/18 in which the date of birth of the petitioner was recorded as 10.11.2002. Hence, on the date of occurrence, the age of the petitioner was determined as 15 years, 10 months and 9 days.

7. As per the prosecution case, the petitioner and four named in the FIR opened fire on an employee of the Observation Home, namely, Bijrendra Kumar and one Saroj Kumar, a juvenile in conflict with law. The injured were taken to the Sadar Hospital, Purnea and, subsequently, both the injured



died.

8. The prayer for bail of the petitioner was rejected by the Juvenile Justice Board vide order dated 31.07.2019.

9. The petitioner assailed the aforesaid order dated 31.07.2019 vide Cr. Appeal No.37/2019 before the learned Additional District & Sessions Judge-1st-cum-Special Judge, Purnea.

10. The Special Court vide impugned order dated 05.11.2019 upheld the order passed by the Juvenile Justice Board, Purnea and rejected the appeal preferred by the petitioner.

11. Learned counsel for the petitioner submitted that the other co-accused persons, namely, Amarendra Kumar Kushwaha, Rakhi Devi, Anand Choudhary @ Anand Prakash, Mithu Kumar @ Mithun Kumar, Shippy Singh and Ranjeet Kumar Paswan @ Ranjeet Paswan have already been granted bail vide different orders passed by the different benches of this Court.

12. He submitted that neither the Juvenile Justice Board nor the Special Court has appreciated the ratio laid down by this Court in **Lalu Kumar & Ors. vs. The State of Bihar &**



Ors. reported in 2019(4) PLJR 833.

13. 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.

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

15. It would be evident from order of the Juvenile Justice Board that the prayer for bail of the petitioner was rejected mainly on the ground of seriousness of the offence and also on the ground that he is mentally mature and of criminal mind and allowing him on bail would defeat the objects of the act. Further, if he would be released, there is reasonable grounds for believing that he would come in association with known criminals. His release would also expose him to moral, physical and psychological danger.

16. The power 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). In paragraphs 84 to 86 of the judgment this Court



observed as follows:

“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. The impugned order reveals 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 Court below in refusing the prayer for bail to the petitioner. There was also no material before the Courts below to believe that the release of the petitioner was likely to 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. Moreover, most of the adult accused persons involved in the present case have already been granted bail vide different orders passed by this Court.

18. Therefore, in my opinion, the impugned order passed by the learned 1st Additional District & Sessions Judge-cum-Special Judge, Purnea in Cr. Appeal No.37/2019 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.

19. Accordingly, the impugned order dated 05.11.2019 passed in Cr. Appeal No.37/2019 passed by learned Additional District & Sessions Judge-1st-cum-Special Judge, Purnea is set aside. Consequently, order dated 31.07.2019 passed in K. Hat P.S. Case No.658 of 2018 by the Juvenile Justice Board, Purnea 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, Purnea in K. Hat P.S. Case No.658 of 2018.



21. The revision application stands allowed.

(Ashwani Kumar Singh, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13.06.2020
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