

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1514 of 2019

Arising Out of PS. Case No.-194 Year-2019 Thana- NARHATT District- Nawada

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X5.

... .. Petitioner

Versus

The State of Bihar

... .. Respondent

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Appearance :

For the Petitioner	:	Mr. Priyajeet Pandey, Advocate
		Mr. Milind Kumar Mishra, Advocate
For the Respondent	:	Mr. Anand Kishore Choudhary, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT
Date: 09-09-2020

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 X5.

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 Act of 2015 against the



judgment dated 18.11.2019 passed by learned 1st Additional Sessions Judge-cum-Special Court, Nawada in Cr. Appeal (Juvenile) No. 20 of 2019 whereby the appeal was dismissed against the order dated 20.08.2019 passed by learned Principal Magistrate, JJ Board, Nawada in Narhat P.S. Case No. 194 of 2019 registered under Sections 376(AB), 506 of the Indian Penal Code and Section 4 of the Protection of Children from Sexual Offences Act refusing prayer for bail of the petitioner.

5. The petitioner is lodged in the Observation Home at Biharsharif, Nalanda.

6. The Juvenile Justice Board, Nawada, vide order dated 05.08.2019, determined the age of petitioner as 15 years, 6 months and 5 days on the date of occurrence on the basis of the documents produced by Bihar School Examination Board. Hence, he was declared a juvenile in conflict with law on the date of occurrence.

7. The prosecution case, in brief, is that on the date and time of occurrence, the petitioner took away the victim on the pretext of giving chocolate and dalmot at his house and forcibly committed rape upon her as a result of which blood was oozing from her body and her clothes soaked in blood. When the victim reported the matter to her mother (informant) then the



petitioner tried to gave Rs.500/- and told the informant Sanju Devi to not disclose the fact to his parent and if she did so then her daughter will be done to death.

8. The prayer for bail of the petitioner was rejected by the Juvenile Justice Board vide order dated 20.08.2019.

9. The petitioner assailed the aforesaid order dated 20.08.2019 in appeal vide Cr. Appeal (Juvenile) No. 20 of 2019 before 1st Additional Sessions Judge-cum-Special Court, Nawada, who vide impugned order dated 18.11.2019, upheld the order passed by the Juvenile Justice Board, Nawada and rejected the appeal preferred by the petitioner.

10. Learned counsel for the petitioner submitted that the petitioner is quite innocent person and he has falsely been implicated in this case due to previous dispute between the informant and parents of the petitioner. The parents of petitioner and informant both are co-villagers and distant relative.

11. He submitted that neither the Juvenile Justice Board nor the Special Court could appreciate the ratio laid down by this Court in **Lalu Kumar & Ors. vs. The State of Bihar & Ors.** reported in **2019(4) PLJR 833** while passing order on the application for bail of the petitioner.



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. 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.

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 Juvenile Justice Board that the prayer for bail of the petitioner was rejected on the ground that the case is of heinous nature and if he will be released on bail, there is possibility of his moral fall and danger to life and as such his release on bail will defeat the ends of justice. The appellate court has rejected his appeal on the aforesaid ground.

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 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 appellate court and the Juvenile Justice Board in refusing the prayer for bail of the petitioner. There was also no material before the court below to believe that the release of the petitioner would bring him into association with any known criminals. There was 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.

19. For the reasons noted above, the impugned judgment dated 18.11.2019 passed by learned 1st Additional Sessions Judge-cum-Special Court, Nawada in Cr. Appeal (Juvenile) No. 20 of 2019 arising out of Narhat P.S. Case No. 194 of 2019 is not sustainable in law as it is not consistent with the aims and object of Section 12 of the Act of 2015.

20. Accordingly, the impugned judgment dated 18.11.2019 passed by learned 1st Additional Sessions Judge-cum-Special Court, Nawada in Cr. Appeal (Juvenile) No. 20 of 2019 is set aside. Consequently, order dated 20.08.2019 passed by learned



Principal Magistrate, JJ Board, Nawada in Narhat P.S. Case No. 194 of 2019, is also set aside.

21. 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, Nawada in Narhat P.S. Case No. 194 of 2019.

22. The revision application stands allowed.

23. Since the court proceedings are being conducted through virtual mode and normal court functioning has not been restored till date, it is considered appropriate to adopt the following procedure for communication of the present order:-

- (i) The judgment, which has been dictated during the course of proceeding of the virtual court, shall be communicated to me on my email by the Sr. Secretary.
- (ii) The corrected copy of the judgment shall be transmitted by me from my email id to the Sr. Secretary, which shall be treated to be an authentic copy of the order passed by this Court in the present proceeding.



- (iii) Hard copy of the judgment duly signed by me shall be preserved in my residential office for documentation and future use, if any.
- (iv) Let a copy of the judgment be sent to Mr. Milind Kumar Mishra, learned counsel for the petitioner also on his email.
- (v) Let steps be taken by the Sr. Secretary/registry for up-loading of the present order without compromising with the norms of social distancing.

(Ashwani Kumar Singh, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	10.09.2020
Transmission Date	10.09.2020

