

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1569 of 2019

Arising Out of PS. Case No.-289 Year-2019 Thana- DUMRAO District- Buxar

X1

... .. Petitioner

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Petitioner	:	Mr. Krishna Prasad Singh, Senior Advocate Mr. Bhaskar Shankar, Advocate
For the Respondent	:	Mr. Satya Nand Shukla, APP

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 15-06-2020

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 X1.

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 judgment dated



10.12.2019 passed in Cr. Appeal No.98/2019 by learned Additional Sessions Judge-1st-cum-Special Judge, Buxar whereby the appeal was dismissed against the order dated 06.11.2019 passed in Dumraon P.S. Case No.289 of 2019 registered under Sections 363, 365 and 302 read with 34 of the Indian Penal Code by the Juvenile Justice Board, Buxar, refusing prayer for bail of the petitioner.

5. The petitioner is lodged in the Observation Home at Buxar.

6. The Juvenile Justice Board, Buxar, vide order dated 03.10.2019, declared the petitioner a juvenile in conflict with law on the basis of photocopy of the admission register produced by the Principal of the DAV Public School, Dumraon in which the date of birth of the petitioner was recorded as 15.08.2005. Hence, on the date of occurrence, the age of the petitioner was determined as 13 years, 11 months and 22 days.

7. The prosecution case, according to the informant Gajendra Tiwari is that on 07.08.2019 at about 3:30 p.m., the son of the informant namely, Ashish Kumar had gone to see the fair organized on the eve of Kali Puja, after informing his mother, but did not return to his home till night.



Subsequently, body of the informant's son Ashish Kumar was found from the semi constructed building of the electricity department on 24.08.2019. The informant was called and he identified the dead body of his son.

8. The prayer for bail of the petitioner was rejected by the Juvenile Justice Board vide order dated 06.11.2019.

9. The petitioner assailed the aforesaid order dated 06.11.2019 in appeal vide Cr. Appeal No.98/2019 before the learned Additional District & Sessions Judge-1st-cum-Special Judge, Buxar.

10. The Special Court, vide impugned order dated 10.12.2019, upheld the order passed by the Juvenile Justice Board, Buxar and rejected the appeal preferred by the petitioner.

11. Learned counsel for the petitioner submitted that the first information report was registered against unknown. The name of the petitioner transpired in course of investigation on the basis of confessional statement made by an adult co-accused Chotan Yadav @ Balram Jee before the police, who has already been granted bail by a bench of this Court vide order passed in Cr. Misc. No.81769 of 2019.



12. 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**.

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 on two grounds. Firstly, on the ground that he is resident of the same locality where the victim was residing and his release would invoke tension in the society and secondly, . his release would also expose him to moral, physical and psychological danger. The Special Court has rejected his appeal on the aforesaid two grounds as also on the ground of gravity of the offence.

16. 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).

17. 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'."

18. 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.

19. 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 special court and the JJB 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 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, on merit, it is merely a case of last seen together and an adult co-accused, whose confession before the police during investigation became a ground for implication of the petitioner has already been granted bail by a bench of this Court.

20. For the reasons noted above, the impugned



judgment dated 10.12.2019 passed in Cr. Appeal No.98/2019 by the learned Additional Sessions Judge-1st-cum-Special Judge, Buxar arising out of Dumraon P.S. Case No.289 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.

21. Accordingly, the impugned judgment dated 10.12.2019 passed in Cr. Appeal No.98/2019 by the learned Additional Sessions Judge-1st-cum-Special Judge, Buxar is set aside. Consequently, the order dated 06.11.2019 passed in Dumraon P.S. Case No.289 of 2019 by the Juvenile Justice Board, Buxar is also 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 Juvenile Justice Board, Buxar in Dumraon P.S. Case No.289 of 2019.

23. The revision application stands allowed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16.06.2020
Transmission Date	16.06.2020

