

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.22811 of 2021

Arising Out of PS. Case No.-78 Year-2020 Thana- MAHILA P.S. District- Kaimur (Bhabua)

1. Pramod Yadav Son of Gorakh Yadav Resident of Village - Madurni, P.S.- Chainpur, District - Kaimur (Bhabua)
2. Chhotu Yadav Son of Shiv Pujan Yadav Resident of Village - Madurni, P.S.- Chainpur, District - Kaimur (Bhabua)

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Prabhakar Singh, Advocate
For the Opposite Party/s : Mr.Ajit Kumar, APP

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

4 06-12-2021 It has come under the heading 'To Be Mentioned' on the verbal direction of this Hon'ble Court.

The petitioners who are in custody being juvenile in conflict with law, have preferred the present application under Section 439 & 440 of the Cr.P.C. in connection with Mahila Bhabua P.S. Case No. 78 of 2020 for the offences punishable under Section 323, 341, 504 and 376G read with Section 34 of the Indian Penal Code.

An objection was made by learned APP, Shri Ajit Kumar after the order was dictated, but before it could be signed, that in view of Sub-Section (5) of Section 101 of the Juvenile Justice (Care and Protection of Children) Act of 2015, an appeal will lie and the present application under Section 439 & 440 of the Code of Criminal Procedure is not maintainable and as such the



present case has been posted under the heading 'To Be Mentioned'.

Section 101 (5) of the Juvenile Justice (Care and Protection of Children) Act of 2015 (hereinafter referred as Act, 2015) reads inter-alia as follows:-

101. (5) *“Any person aggrieved by an order of the Children’s Court may file an appeal before the High Court in accordance with the procedure specified in the Code of Criminal Procedure, 1973.”*

Perusal of Section 101 (5) of the Juvenile Justice (Care and Protection of Children) Act of 2015 reveals that the same envisages that any person aggrieved by any order of the Children’s Court may file the appeal before the High Court in accordance with the procedure specified in the Code of Criminal Procedure.

The issue as to whether an appeal under Section 101(5) of the Juvenile Justice (Care and Protection of Children) Act of 2015 or an application under Section 439 of the Code of Criminal Procedure, would be maintainable before the High Court by any person aggrieved by the order granting or rejecting bail by the Childrens’ Court was considered by the Division Bench of this Court in the case of **Lalu Kumar Vs. State of Bihar** reported in **2019 (4) PLJR 833 2019 SCC Online Pat 1697**. The relevant question (v) framed in this respect has been answered in paragraph-178 inter-alia as under:-



Q. (v). *“Whether an appeal under Section 101(5) of the Act of 2015 or an application under Section 439 of the CrPC would be maintainable before the High Court by any person aggrieved by the order granting or rejecting bail by the Childrens’ Court?”*

A. *Against an order granting or refusing bail passed by the Childrens’ Court, no application for bail or cancellation of bail under Section 439(1) or 439(2) of the CrPC shall lie before the High Court and against such an order only an appeal under Section 101(5) of the Act of 2015 would be maintainable. The ‘phrase’ “in accordance with the procedure specified in the Code of Criminal Procedure” does not allude to application of the entire CrPC to the Act of 2015. The said reference to the CrPC in Section 101(5) of the Act of 2015 only means that the procedure, and not the substantive Sections, prescribed under Chapter XXIX shall apply to the appeal that could be filed under the said Section. To clarify further, the appeal, in terms of Section 101(5) has to be considered on the basis of material available on the record, i.e., material produced before the Board under Section 13 of the Act of 2015 and considerations arrived at in terms of Section 12 of the Act of 2015 for the purpose of grant of bail and not the considerations of grant of bail in terms of Sections 437, 438 and 439 of the CrPC. The reference in Section 101(5) to “procedure specified in the Code of Criminal Procedure” does not enlarge the scope of sub-sections to create a substantive right in terms of Section 439 of the CrPC in Section 101(5) of the Act of 2015.”*

This Court is in agreement with the view expressed by the Hon’ble Division Bench of this Court.

Accordingly, this Court finds merit in the objection



raised by the learned APP. The present application under Section 439 & 440 of the Code of Criminal Procedure is dismissed as being not maintainable.

Learned counsel appearing on behalf of the petitioners submits that he has preferred the present application against the order of rejection dated 17.12.2020 passed in Adult Criminal Trial No. 08 of 2020 arising out of Mahila Bhabua P.S. Case No. 78 of 2020 by the Additional Sessions Judge I cum Special Judge, Kaimur at Bhabua. He further submits that he may be permitted to convert the application under Section 439 read with 440 of the Cr.P.C. into an Appeal under Section 101 (5) of the Juvenile Justice (Care and Protection of Children) Act of 2015.

In the circumstances, learned counsel for the petitioners is permitted to convert the present application into an Appeal under Section 101 (5) of the Act by filing appropriate amendment application. Thereafter, the office will make necessary correction in the file and list the converted appeal under heading 'For Admission'.

(Purnendu Singh, J)

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