

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1028 of 2022

Arising Out of PS. Case No.-242 Year-2021 Thana- SAKRA District- Muzaffarpur

Najni Khatoon, Wife of Bablu Kumar, Daughter of Asgar Ansari R/V-
Kutubpur Ganiari, P.S- Sakra O.P- Bariyarpur, Dist- Muzaffarpur

... .. Petitioner

Versus

1. The State of Bihar through Principal Secretary, Home Depart. (Police), Bihar Patna
2. The Director General of Police, Bihar, Patna
3. The Superintendent of Police, Muzaffarpur
4. The Deputy Superintendent of Police, East Muzaffarpur
5. The S.H.O. Sakra Police Station, Muzaffarpur
6. The Investigating Officer, Sakra P.S- case No. 242/2021, Sakra P.S, Muzaffarpur
7. Salerni Nisha, Wife of Md. Suleman Ansari, Resident of village- Kutubpur, P.S- Sakra (Bariyarpur OP) Dist- Muzaffarpur.

... .. Respondents

Appearance :

For the Petitioner/s : Mr. Manish Mohan Kateryar, Advocate
For the Respondent/s : Mr. Suman Kumar Jha, AC to AAG-3

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

4 22-11-2022 Heard learned counsel for the petitioner and Mr.
Suman Kumar Jha, learned AC to AAG-3 for the State.

The petitioner in this case is aggrieved by and dissatisfied with the order dated 02.07.2022 passed by learned ACJM, XII, Muzaffarpur (East) in connection with Sakra P.S. Case No. 242 of 2021 dated 14.04.2021 registered for the offences alleged under Section 368 and 366A IPC.

The case has been registered at the instance of grandmother of the petitioner who has been impleaded as



respondent no. 7. She was noticed by this Court but despite service of notice, she has not entered appearance.

Learned counsel for the petitioner has assailed the impugned order on the grounds inter alia that the petitioner in this case would fall within the definition of “a child in need of care and protection” as defined under Clause (14) of Section 2 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as ‘the J.J. Act’). She is said to be the victim of crime and being a minor as determined by the learned ACJM, XII, she would fall in the category of the child under Clause (14) of Section 2 of the the J.J. Act. It is his submission that in such circumstance, the learned ACJM should have sent the petitioner to the Juvenile Justice Board for assessment of her age and to find out whether she is a ‘child’ but in this case learned ACJM instead of sending the records to the Juvenile Justice Board for determination of her age, took upon himself to determine the age. In the process the petitioner was not heard.

Learned counsel submits that because no hearing was given to the petitioner she has been seriously prejudiced inasmuch as she could not produce cogent materials before the court to show that her date of birth is 28.04.2003 as per the date



of birth certificate issued by the Government of Bihar (Department of Planning and Development).

Attention of this Court has been drawn towards Annexure '1' to the writ application. It is submitted that the petitioner had disclosed her age as about 20 years and the learned Magistrate has with his eyes also assessed her age as 20 years and these facts are duly mentioned in the order dated 02.07.2022, despite this, the Court relied upon the school certificate of the Government Hira Kamala High School, Gopalpur and the date of birth mentioned in the admit card of the Bihar School Examination Board and declared that the petitioner is minor.

Learned counsel submits that the impugned order suffers from non-compliance with the mandatory provision of Section 94 of the J.J. Act. It is his further submission that the certificate as contained in Annexure '1' is admissible and shall take precedence over the matriculation admit card. It is stated that the petitioner has given birth to a child in the remand home and she is seeking her release so that she can live her own life with the person of her own choice with whom she has married.

Learned AC to AAG-3 for the State has though opposed this application but at the end it is not disputed that in the given facts and circumstances, the records should have been



sent to the Juvenile Justice Board for determination of age of the victim in terms of the scheme of Section 94 of the J.J. Act, 2015.

Having heard learned counsel for the petitioner and the State as also upon perusal of the records, this Court is of the considered opinion that the learned ACJM-XII, Court Muzaffarpur (East) having noticed the school certificate and the admit card of the Bihar School Examination Board showing the date of birth of the petitioner as 28.04.2005, was required to send the records to the Juvenile Justice Board for the determination of age of the petitioner where the petitioner could have produced the date of birth certificate as contained in Annexure '1' and proper inquiry as envisaged under the scheme of J.J. Act, 2015 could have been conducted and her age determination would have taken place accordingly. The learned ACJM has, thus, erred on this score.

The impugned order is set aside to the extent that the age determination done by the learned ACJM-XII, Court, Muzaffarpur (East) cannot be said to be final and in accordance with law.

Let the records of the case be sent to the Juvenile Justice Board, Muzaffarpur within a period of two weeks from the date of communication of this order. On receipt of the



records, the Juvenile Justice Board, Muzaffarpur shall conduct an inquiry into the age of the petitioner, the petitioner shall have an opportunity to adduce her evidence also and upon proper consideration of the entire materials, the Juvenile Justice Board, Muzaffarpur shall pass an appropriate order determining the age of the petitioner.

The entire exercise shall be completed within a period of two months from the date of communication of this order. In case, upon determination of age, it is found that the petitioner is major, she will be released from the remand home after recording her statement and following the procedures prescribed on this behalf.

The Superintendent of Remand Home, Gaighat, Patna is directed to provide all nutrients and medicines which are required for the newly born baby and the mother.

This application stands disposed of accordingly.

(Rajeev Ranjan Prasad, J)

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Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.

