

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.702 of 2021

Arising Out of PS. Case No.-20 Year-2019 Thana- PHULWARIYA District- Gopalganj

Mazhar Hashmi, son of Akir Kussain Resident of Village- Sawanahi Patti
Bhanpur, P.S- Phulwari, Dist- Gopalganj, Bihar.

... .. Petitioner

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Petitioner : Mr.Sumit Shekhar Pandey, Advocate

For the Respondent : Mr.Akhileshwar Dayal, APP

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

3 05-07-2022 Heard Mr. Sumit Shekhar Pandey, learned counsel for
the petitioner and Mr. Akhileshwar Dayal, learned A.P.P. for the
State.

Let it be recorded that as usual learned A.P.P. who has
been assigned with this brief has not turned up and Mr. Dayal,
learned A.P.P. has just completed the formality without brief.

This revision application has been preferred for
setting aside the order dated 04.03.2021 passed by learned
Additional District & Sessions Judge – 1st, Gopalganj whereby
and whereunder the learned Sessions Judge rejected the criminal
appeal of the petitioner bearing Criminal Appeal No. 23/2020
which was preferred against the order dated 16.09.2020 passed
by the learned Juvenile Justice Board, Gopalganj in connection
with Fulwariya P.S. Case No. 20/2019 registered for the offence
under Sections 121/121(A)/124(A)/153(A)/153(B)/295(A) of



the Indian Penal Code and 66(F) of the Information Technology Act.

The petitioner has been though declared juvenile aged about 17 years 01 month and 23 days at the time of commission of the alleged offences, he is not satisfied with the preliminary assessment done by the Juvenile Justice Board (in short “the Board”) under Section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as the “Act of 2015”).

Learned counsel for the petitioner submits that the Board has not pointed out in it’s order as to what kind of questions were put to the juvenile from which the Board could come to a conclusion that he is fully mature and understands the consequences of the acts committed by him. It is his submission that the learned Appellate Court has not appreciated the submission advanced on behalf of the present petitioner. The Appellate Court has refused to interfere with the order of the Board for the reason that the petitioner is being prosecuted for the offences alleged under Sections 121, 121(A), 124(A), 153(A), 153(B), 295(A) of the Indian Penal Code read with Section 66(F) of the Information Technology Act. Under some of the provisions of the Indian Penal Code there are punishment



of death or life imprisonment.

Earlier this case was adjourned on 22.06.2022 to enable learned counsel for the petitioner to find out whether the Children's Court to whom the record has been sent has passed any order as envisaged under Section 19 of the Act of 2015. Learned counsel submits that he is still not aware whether any order has been passed under Section 19 of the Act of 2015. It is submitted that the petitioner has applied for certified copy of the entire order-sheet and only after obtaining the same he would be in a position to know whether any order has been passed under Section 19 of the Act of 2015 or not.

This court has perused the impugned order. The Juvenile Justice Board has in its order dated 16.09.2020 categorically recorded that in course of preliminary assessment conducted by them, from the answers to the questions put to the juvenile, they had come to a conclusion that the petitioner is fully matured and capable of understanding the alleged offence committed by him and the consequences thereof. After recording their satisfaction, the learned Principal Magistrate and the Member of the Board decided to send the records to the Children's Court. The petitioner preferred an appeal against the said order before the learned Children's Court. The main



argument before the learned Appellate Court was that the Board had failed to appreciate the definition of the words 'heinous crime' as provided under Section 2(33) of the Act of 2015. The submission was that the petitioner cannot be said to have been involved in any alleged heinous offence. It is this submission on behalf of the petitioner which has been considered by the learned Appellate Court and the same has been answered in the impugned order dated 04.03.2021.

In the case of **Lalu Kumar & Ors. Vs. The State of Bihar** reported in **2019 (4) PLJR 833**; the Hon'ble Division Bench of this court had occasion to consider the various provisions of the Act of 2015 including Section 15 and 19 of the Act of 2015. The Hon'ble Division Bench held that the provisions of the statute clearly have a scheme which operates as a double safety valve to protect the interest of a juvenile who in his preliminary assessment stage is found capable both mentally and physically to commit a heinous offence and ability to understand the consequences of the same.

It has been held that after the records are sent to the Children's Court by the Juvenile Justice Board, the Children's Court is once again obliged to decide as to whether there is a need for trial of a child as an adult as per the provisions of the



Code of Criminal Procedure. The Children's Court shall pass an appropriate order after trial subject to provisions of sections and Section 21 considering the special needs of the child, the tenets of fair trial and by maintaining a child friendly atmosphere.

While going through the impugned order, this Court is satisfied that no illegality or infirmity may be found to have been committed by the learned Juvenile Justice Board, Gopalganj in recording its satisfaction during the preliminary assessment stage. Similarly, the Appellate Court has also rightly answered the submissions raised on behalf of the petitioner. This Court, therefore, finds no reason to interfere with the impugned order.

As discussed above, Section 19 of the Act of 2015 protects the interest of the child by way of a second safety valve and this Court expects that the Children's Court in seisin of the matter shall take note of it and decide the matter keeping in mind the said provision of the Act of 2015.

This Revision Application stands disposed of accordingly.

(Rajeev Ranjan Prasad, J.)

Rajeev/-

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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'.

