

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.167 of 2023

Arising Out of PS. Case No.-19 Year-2022 Thana- MAHILA PS District- Darbhanga

JYOTI KUMARI Daughter of Sanjay Kumar Resident of Village - Turki, P.S.- Baheri, District - Darbhanga, Under the guardianship of his father Sanjay Kumar, Male, Aged about 41 years, Resident of village - Turki, P.S.- Baheri, District - Darbhanga.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Krish Kumar Son of Manoj Lal Deo Resident of village - Turki, P.S.- Baheri, District - Darbhanga

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Girish Chandra Jha
For the Respondent/s : Mr. Amit Kumar Rakesh

CORAM: HONOURABLE MR. JUSTICE ARVIND SINGH CHANDEL
ORAL ORDER

3 02-07-2024 Heard learned counsel for the Petitioner and learned counsel appearing on behalf of the respondents.

2. This criminal revision application has been preferred against the order dated 30.01.2023 passed in Cr. Appeal No. 25 of 2022 by the learned Sessions Judge, Darbhanga in Enquiry Case No. 19 of 2022 arising out of Mahila P.S. Case No. 19 of 2022, whereby and whereunder upheld the order 06.08.2022 passed by the Juvenile Justice Board, Darbhanga, whereby the Juvenile Justice Board, Darbhanga has conducted the preliminary assessment in respect of respondent no. 2 and kept the record to be disposed of by the



Board itself.

3. According to the case of the prosecution, it is alleged that the respondent no.2, who was the juvenile boy, committed forcible sexual intercourse with the victim girl, who is also juvenile and a minor girl.

4 On the basis of the report made by the victim Mahila P.S. Case No. 19 of 2022 under Section 376, 366(A), 323, 504, 34 of the Indian Penal Code and Sections 4 and 6 of the POCSO Act has been registered against the respondent no.2 and other persons.

5. The Exclusive Special Court (POCSO Act), Darbhanga heard the matter on the point of juvenility of respondent no.2 and assessed his age below 18 years and transferred the records to the Juvenile Justice Board, Darbhanga for needful action.

6. The Juvenile Justice Board, Darbhanga passed the order of preliminary assessment on 06.08.2022 and kept the record for disposal by the Board itself. The said order of the Juvenile Justice Board, Darbhanga has been challenged by the petitioner herein before the learned Court of Sessions Judge, Darbhanga. The Sessions Judge, Darbhanga in Cr. Appeal No. 25 of 2022 passed the order on 30.01.2023 and affirmed the



order dated 06.08.2022 of the Juvenile Justice Board. Hence, this revision application.

7. Learned counsel for the petitioner submits that the Juvenile Justice Board, Darbhanga has conducted the preliminary assessment under Section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2015 and passed the order dated 08.06.2022 in absence of experienced psychologists or psycho-social workers or other expert reports, which is contrary to the mandate of law. The said order of the Juvenile Justice Board has also wrongly been affirmed by the learned Sessions Judge.

8. Mr. Amir Kumar Rakesh, learned counsel appearing on behalf of the respondent State and Mr. B.J. Jha, learned counsel for the Opposite Party no. 2 opposed the above arguments raised by the learned counsel for the petitioner and submits that at the time of preliminary assessment with regard to the mental and physical capacity and other aspects, which relate to the juvenile boy taking assistance of experienced psychologists or psycho-social workers or other experts is not mandatory. The learned Board passed the order after perusing the entire relevant documents and report available to him. Therefore, the order passed by the learned Board, which has



been duly affirmed by the learned Sessions Court does not warrant any interference.

9. Having considered the facts and circumstances of the case and the submissions advanced on behalf of both the parties as well as bare perusal of the records, annexed with petition, it would be appropriate to reproduce the provision of Section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2015, which is as follows:-

15. Preliminary assessment into heinous offence by Board.-(1) *In case of a heinous offence alleged to have been committed by a child, who has completed or is above the age of sixteen years, the Board shall conduct a preliminary assessment with regard to his mental and physical capacity to commit such offence, ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence, and may pass an order in accordance with the provisions of subsection (3) of Section 18:*

Provided that for such an assessment, the Board may take the assistance of experienced psychologists or psycho-social workers or other experts.

Explanation.-*For the purposes of this section, it is clarified that preliminary assessment is not a trial, but is to assess the capacity of such child to commit and understand the consequences of the alleged offence.*

(2) *Where the Board is satisfied on preliminary assessment that the matter*



should be disposed of by the Board, then the Board shall follow the procedure, as far as may be, for trial in summons case under the Code of Criminal Procedure, 1973(2 of 1974):

Provided that the order of the Board to dispose of the matter shall be appealable under sub-section (2) of Section 101:

Provided further that the assessment under this section shall be completed within the period specified in Section 14.”

10. From bare perusal of the aforesaid provision, it appears that in cases related to heinous offence alleged to have been committed by a child, it is necessary for the Board to conduct preliminary assessment, as contained in Section 15 of the Juvenile Justice (Care and Protection of Children) Act. Though the proviso of clause of section 15(1) provides that at the time of assessment, the Board may take the assistance of experienced psychologists or psycho-social workers or other experts, the language used in the said proviso shows that this exercise is not mandatory.

11. The order dated 06.08.2022 passed by the Juvenile Justice Board clearly shows that the Board passed its order on the basis of SIR, SBR, Advisory Committee Reports as well as Case History available on records and further it has been observed by the Board that due to long relationship between the victim girl and the respondent no.2, such act has been



committed by the respondent no.2. Therefore, I do not find any infirmity and illegality in the order passed by the learned Juvenile Justice Board dated 06.08.2022, which has been duly affirmed in the appeal by the learned Appellate Court vide order dated 30.01.2023.

12. In the result, I do not find any merit in the revision application. Accordingly, this criminal revision application is dismissed at the stage of admission itself.

(Arvind Singh Chandel , J)

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