

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.194 of 2024

Arising Out of PS. Case No.-45 Year-2022 Thana- BAIKUNTHPUR District- Gopalganj

SUO-MOTO CONGNIZANCE TAKEN BY PATNA HIGH COURT Bihar

... .. Petitioner/s

Versus

- 1. The State of Bihar.
- 2. Xxx Son of Ram Babu Rai, Resident of Village- Madhopur Hajari, P.S- Sahebganj, Dist- Muzaffarpur, Under Guardianship of Mother and Natural Guradian Namely Laxmi Devi.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Xxxx
For the P.H.C.	:	Mr. Sanjeev Kumar, Advocate
For the Opposite party	:	Mr. Suraj Narain Yadav, Advocate
		Mr. Upendra Kumar Chaubey, Advocate
For the State	:	Mr. Jharkhandi Upadhyay, A.P.P.

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

13 28-06-2024 The instant revision is filed Suo-Moto by the Hon’ble High Court on the basis of an order dated 08.02.2024 passed in Criminal Revision No.551 of 2023 arising out of Baikunthpur P.S. Case No.45 of 2022.

2. Suffice it to mention here that the aforesaid Baikunthpur P.S. Case No.45 of 2022 was registered against the opposite party no.2 and others, on the allegation of committing offence under Sections 394 and 302 of the I.P.C. The opposite party no.2 was arrested in connection with the said case and produced before the jurisdictional Juvenile Justice Board on the plea that the accused was a juvenile on the date of commission



of the alleged offence. The Board held the accused/opposite party no.2 as juvenile on the basis of an order of the Board passed in Juvenile Enquiry No.248 of 2022 holding him a juvenile delinquent relying on the record of admission register produced by the Principal, Rajkiya Madhya Vidyalaya, Madhopur, Hazari Bazar, P.S.-Shahebganj, District Muzaffarpur.

3. It is needless to say that after production of the opposite party no.2 before the Board, a juvenile enquiry was registered and during enquiry, the Board relied on the decision taken in another inquiry against the same juvenile being Juvenile Enquiry No.248 of 2022 where he was declared as a juvenile on the date of commission of offence.

4. It is submitted by the learned advocate for the petitioner, High Court at Patna that no independent inquiry was done in Juvenile Enquiry No.19 of 2023. In Juvenile Enquiry No.248 of 2022, the Board held the opposite party no.2 juvenile on the basis of an admission register of the above named school. A coordinate Bench while disposing of Criminal Revision No.551 of 2023 had the opportunity to examine the relevant copy of the admission register which was seized by police and lying in the case diary.

5. On perusal of the relevant entry in the admission



register, the date of birth of the juvenile was recorded as on 11.02.2008 in Serial No.92. In Serial No.91 of the same register, the name of another student, namely, Nandan Kumar was entered and it is found from the parents name that Nandan Kumar is the full brother of the opposite party no.2, juvenile in conflict with law. In the relevant column of date of birth of Nandan Kumar, there is clear interpolation and his date of birth was recorded as on 10.02.2005. Thus, as per the admission register, Nandan Kumar is older by three years from the juvenile in conflict with law. It is a matter of suspicion that Nandan Kumar being the elder brother took his admission in Class-I and the juvenile in conflict with law though is three years younger than Nandan Kumar took admission in Class-II. The Principle of the school failed to clarify as to why and how the younger brother was admitted to Class-II and the elder brother was admitted to Class-I. No explanation was forthcoming about the interpolation on the admission register.

6. The learned advocate on behalf of the petitioner refers to a decision of the Hon'ble Supreme Court in the case of ***Parag Bhati (Juvenile) through Legal Guardian-Mother-Rajni Bhati Vs. State of Uttar Pradesh and Another*** reported in ***(2016) 12 SCC 744***. In the aforesaid case, only point for



consideration before the Hon'ble Supreme Court was whether in the facts and circumstances of the present case when the date of birth mentioned in the matriculation certificate was doubtful, the ossification test can be the last resort to prove the juvenility of the accused.

7. The Hon'ble Supreme Court relied upon the decision of *Om Prakash Vs. State of Rajasthan & Anr.* reported in *(2012) 5 SCC 201* in para-22 & 23 of Om Prakash, the Hon'ble Supreme Court held :

“22. It is no doubt true that if there is a clear and unambiguous case in favour of juvenile accused that he was a minor below the age of 18 years on the date of the incident and the documentary evidence at least prima facie proves the same, he would be entitled for this special protection under the offence and thereafter attempts to take statutory shelter under the guise of being a minor, a casual or cavalier approach while recording as to whether an accused is a juvenile or not cannot be permitted as the courts are enjoined upon to perform their duties with the object of protecting the confidence of common man in the institution entrusted with the



administration of justice.

23. Hence, while the courts must be sensitive in dealing with the juvenile who is involved in cases of serious nature like sexual molestation, rape, gang rape, murder and host of other offences, the accused cannot be allowed to abuse the statutory protection by attempting to prove himself as a minor when the documentary evidence to prove his minority gives rise to a reasonable doubt about his assertion of minority. Under such circumstance, the medical evidence based on scientific investigation will have to be given due weight and precedence over the evidence based on school administration records which give rise to hypothesis and speculation about the age of the accused. The matter however would stand on a different footing if the academic certificates and school records are alleged to have been withheld with ulterior motive and authenticity of the medical evidence is under by the prosecution.”

8. In the instant case the Juvenile Justice Board did not make any independent inquiry in respect of Juvenile Enquiry Case No.19/2023, the Board relies upon the inquiry



report of J.E. No.248 of 2022. This Court is inclined to record that the Board is under legal obligation to hold independent inquiry in respect of different cases where an accused claims juvenility. It is found from the order dated 08.02.2024 passed in Criminal Revision No.551 of 2023 by a Coordinate Bench that the opposite party no.2 was involved in heinous offence in connection with as many as fifteen cases.

9. The learned advocate on behalf of the petitioner further submits that the opposite party no.2 is involved in fourteen numbers of criminal cases. He was first implicated in a criminal case when he was aged about 10 years. Therefore, from his very childhood, he is involved in criminal activities. By the passage of time, he has ripened his hands and mind to committed even heinous offences like, Decoity and murder.

10. Be that as it may, on perusal of the admission register seized by the police during investigation of the case. There is every reason to raise a doubt in respect of recording of date of birth because of interpolation and the elder brother was admitted to Class-I when the juvenile who is younger by three years was admitted to Class-II.

11. The Juvenile Justice Board is under obligation to make an independent inquiry in respect of J.E. No.19/2023



taking into consideration the documents relating to the age of the juvenile collected by the Investigation Officer as well as the decision of the Hon'ble Supreme Court referred to herein above.

12. It is pointed out by the learned advocate on behalf of the opposite party no.2 that in connection with Baikunthpur P.S. Case No.45 of 2022 all the accused persons except the petitioner were released on bail. The petitioner is in custody in juvenile home for about 28 months.

13. Considering the long detention of the juvenile, the Board may be directed to conclude the enquiry at the earliest.

14. I concur with the submission made by the learned advocate on behalf of the opposite party no.2, if after inquiry of J.E. No.19/2023 the Board finds that the opposite party no.2 was a juvenile at the relevant point of time when the offence was committed. He is entitled to be released on bail subject to the fulfillment of other conditions and limitation as prescribed under the law.

15. Therefore, the Juvenile Justice Board, Gopalganj is directed to conclude the enquiry of J.E. No.19/2023 independently considering all materials on record and positively conclude and submit his report in respect of the said enquiry within 60 days from the date of communication of this order.



16. The parties are at liberty to act on the server copy of this order.

17. The instant revision application is accordingly, disposed of.

18. The Registry is directed to return the original record of Cr. Revision No.551 of 2023 to the Juvenile Justice Board, Gopalganj forthwith.

(Bibek Chaudhuri, J)

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