IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.720 of 2023

Arising Out of PS. Case No.-299 Year-2018 Thana- MAJHAULIA District- West Champaran

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Accused.

... ... Appellant/s

Versus

1. The State of Bihar
2. Father of the victim.

... ... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Udit Narain Singh, Adv.
		Mr. Ramchandra Sahni, Adv.
For the Respondent/s	:	Mr. Bipin Kumar, A.P.P.
For the Pvt. Respondent	:	Mr. Sanjeev Kumar, Adv.
		Mr. Sitesh Kashyap, Adv.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE PRAVEEN KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 11-02-2026

Heard learned counsel for the appellant, learned Additional Public Prosecutor for the State and learned counsel for the informant.

2. The present criminal appeal has been preferred against the judgment of conviction dated 09.05.2023 (hereinafter referred to as the 'impugned judgment') and the order of sentence dated 16.05.2023 (hereinafter referred to as the 'impugned order') passed by the learned court of 1st Additional Sessions Judge -cum- Children Court, District, Bettiah, West Champaran in Special Case No. 15 of 2018, CIS

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No. POCSO 48 of 2018. By the impugned judgment of conviction, the appellant has been convicted for the offences punishable under Section 376(3) of the Indian Penal Code and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (in short 'POCSO Act') and vide impugned order of sentence, he has been directed to undergo rigorous imprisonment for a period of twenty years with a fine of Rs. 20,000 (Twenty thousand) under Section 376(3) of the Indian Penal Code (in short 'IPC') and in default of payment of the fine, the appellant shall undergo simple imprisonment further for a period of six months.

Prosecution Case.

3. The prosecution case is based on written information furnished by the father of the victim girl (X) on 11.07.2018 at 7:00 A.M. to the Station House Officer of Manjhauliya Police Station, district- West Champaran. In his written information (Exhibit-1), the informant (P.W.-3) has alleged as under:-

"That on 10.07.2018 in the night, Barat had come near his house and his minor daughter along with his wife had gone to watch the Barat and returned back in the night at 1:00 A.M. while he was sleeping at the Machan situated at his door. On seeing them, he instructed them to sit on the Machan and he

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went to see the Barat where both of them slept. While they were sleeping on the Machan, the appellant, Munna Kushwaha at about 1:30 A.M. in the night, came there and taken her minor daughter towards the east of his house near the field of his brother, Mahendra Mukhiya and committed rape upon her and fled away leaving her in unconscious condition in the field. When the daughter of the informant came to her mother, she woke up and narrated the entire occurrence and thereafter she called him."

4. It appears from the record that after investigation of the case, based on the materials collected in course of investigation, police submitted a charge-sheet under Sections 376 of the I.P.C. and Section 6 of the POCSO Act against the sole accused-appellant on 02.09.2018.

5. Upon submission of charge-sheet, the learned Additional District & Sessions Judge-1st -cum- Special Judge, (POCSO) took cognizance of the offences vide order dated 04.09.2018 and the matter was posted on 15.09.2018 for supply of police paper, framing of charge and determination of age of the accused.

6. On 15.09.2018, learned Special Judge considered the records produced on behalf of the accused which included the

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provisional certificate of the Bihar School Examination Board showing that the date of birth of the accused was 17.02.2001. The date of occurrence being 10.07.2018, the learned Special Judge held that the accused was 17 years 4 months and 24 days on the date of occurrence. Thus, according to the learned Special Judge, the accused was less than 18 years of age. Having said so, the learned Court proceeded to observe that the accused is more than 16 years old and he has committed heinous offence, his mental condition and physical condition were observed by the learned Court and it was found that he was able to understand the circumstances and the result of commission of offence.

With this finding on the record in the order 15.09.2018, the learned Special Judge directed that the case would be tried before the learned 1st Additional District and Sessions Judge, Bettiah, West Champaran, Special Judge (POCSO). It was also observed that on the said date, the Children's Court was not available.

7. The charges were explained in Hindi to the sole accused-appellant who denied the charges and claimed to be tried. The learned trial court framed charges against the appellant-accused under Section 376 of the IPC and Section 6 of

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the POCSO Act vide order dated 22.09.2018.

8. The prosecution in order to prove its charges examined altogether five (5) witnesses and exhibited several documentary evidences. The description of the prosecution witnesses and the exhibits are given hereunder in tabular form:

List of prosecution witnesses.

P.W.-1	Victim
P.W.-2	Mother of the victim.
P.W.-3	Father of the victim, informant.
P.W.-4	Dr. Rashmi Nand Huliya
P.W.-5	Ranveer Kumar Jha

List of documentary evidence.

Exhibit No.	Description of the Exhibit
1	Signature of informant on written application.
2	Medical Report of victim.
2/a	Signature of Dr. Rashmi on medical report.
2/b	Signature of Dr. Akansha on medical report.
2/c	Signature of Dr. Usha Das on medical report.
3	Endorsement made by SHO Ranvir on the written report.
3/a	Signature of SHO Ranvir on the written report.
4	Formal F.I.R.
5	Report of FSL.
5/a	Signature of I.O. on report of FSL.
6	Seizure list of victim cloths.

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6/a	Signature of I.O. on seizure list of victim cloths.
7	Receiving of FSL.
8	FSL report.

9. The statement of the accused was recorded under Section 313 Cr.P.C., he pleaded innocence. The defence has produced one witness as D.W.-1, Ravindra Sah.

Finding of the Trial Court.

10. The learned trial court considering the totality of the circumstances appearing on the record held that evidence of P.W.-2 is worthy of credence and reliable and there is no reason to disbelieve the victim and the entire evidence of the prosecution importantly the victim, the prosecution succeeded to prove the ingredients of committal of rape & aggravated penetrative sexual assault of the child victim aged seven years by the Juvenile accused.

11. The learned Special Judge on the careful scrutiny of the materials available on record found that the prosecution has succeeded in proving the charge of rape and aggravated penetrative sexual assault committed by the Juvenile accused of the child victim aged about seven years beyond all reasonable doubts and has also found that the prosecution has produced reliable and cogent evidence in support of the charges framed

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under Section 376(3) of the IPC and Section 6 of the POCSO Act against the appellant-accused and the defence has failed in creating any dent to the prosecution case and also failed to rebut the presumption. Further the learned Special Judge held the accused guilty of the charges under Section 376(3) of the IPC and Section 6 of the POCSO Act.

Submission on behalf of the appellant.

12. Learned counsel for the appellant submits that while assessing the age of the accused, the learned Special Judge exceeded his power and authority under the law. Sub-section (2) of Section 9 of The Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as the 'J.J. Act') confers power upon the Court other than a Board to determine the age of the person who is a child or was a child on the date of commission of the offence. In this regard, the Court may form its opinion on its own or can make an inquiry, take evidence (but not an affidavit) to determine the age of the person but once the learned Court determines the age and recorded that the accused is a child within the meaning of Section 2 (12) of the J.J. Act, by virtue of sub-section (3) of Section 9 of the J.J. Act, the Court was obliged to forward the child to the Board for passing appropriate orders and sentence.

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In such circumstance, the sentence, if any, passed by the Court shall be deemed to have no effect.

13. Referring to Section 15 of the J.J. Act, learned counsel submits that in case of a heinous offence alleged to have been committed by a child who has completed or is above the age of 16 years, the Board has to 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. After this exercise, J.J. Board may pass an order in accordance with provisions of sub-section (3) of Section 18. Proviso to Section 15 states that while taking such an assessment, the Board may take assistance of experienced psychologists or psycho-social workers or other experts.

14. In the case of **Barun Chandra Thakur Vs. Master Bholu & Anr.** reported in (**2023) 12 SCC 401,** the Hon'ble Supreme Court has pleased to hold and declare that the Board is obliged to take the assistance of experienced psychologists while considering a case under Section 15 of the J.J. Act. It is submitted that once the records of the case are transferred under sub-section (3) of Section 18 of J.J. Act to the Children's Court for trial of the accused as an adult, the

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Children's Court would be guided by Section 19 of the J.J. Act.

15. In the case of **Lalu Kumar and Ors. vs. The State of Bihar** reported in **2019 (4) PLJR 833**, the learned Co-ordinate Bench of this Court has held that Section 19(1) operates as a double safety valve and protects the right of a child who is sought to be prosecuted as an adult. It is because the Children's Court may still take a view that there is no need for trial of a child as an adult and may conduct an inquiry of the Board and pass appropriate order in accordance with law under Section 18 of the J.J. Act.

16. It is submitted that in this case, the learned Special Judge was required to remit the records and send the accused to the Juvenile Justice Board where preliminary assessment in terms of Section 15 of the J.J. Act would have been done. Section 15 assessment is in the exclusive domain of the Juvenile Justice Board but the said exercise has been undertaken by the learned Special Judge on his own that too in haste without seeking any assistance of a psychologist and in one stroke of pen. The learned Special Judge has passed an order that the accused should be tried as an adult. Thus, a mandatory exercise required to be undertaken by the J.J. Board has been given a go-by and an order directing the accused to face trial as an adult

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was passed in haste, depriving him of his valuable right to get assessment done through the Board with the assistance of psychologists/social workers.

17. Learned counsel has though tried to take this Court through the evidences available on the record, but in the kind of submissions made, at the outset, which we have recorded herein-above, in our considered opinion, we should first consider the issue with regard to the procedures adopted by the learned Special Judge as any discussion on the merit of the evidence, in case the appellant succeeds on the very first ground, would cause prejudice to his case.

Submissions on behalf of the State and Informant.

18. Mr. Bipin Kumar, learned Additional Public Prosecutor for the State is present. Learned Additional Public Prosecutor having gone through the scheme of the statute of the J.J. Act does not contest the submissions that under the scheme of the statute, even as power has been conferred upon a Court to determine the age, the preliminary assessment in terms of Section 15 is only in the domain of the J.J. Board.

19. Mr. Sanjeev Kumar, learned counsel for the informant, having understood the issues canvassed by the learned counsel for the appellant does not contest the

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submissions as above.

Consideration

20. Having regard to the submissions recorded, herein-above, and the materials which we have gone through, at this stage, in our considered opinion, the learned Special Judge, POCSO Act, proceeded to conduct the trial of the accused-appellant as an adult without following the established procedure of law. We would first extract the relevant provisions contained under J.J. Act. Sub-sections (12) and (13) of Section 12 are extracted herein-below;

> "2(12) "child" means a person who has not completed eighteen years of age;
>
> 2(13) "child in conflict with law" means a child who is alleged or found to have committed an offence and who has not completed eighteen years of age on the date of commission of such offence;"

21. Section 2(20) defines the Children's Court as under;

> " Children's Court" means a Court established under the Commissions for Protection of Child Rights Act, 2005 (4 of 2006) or a Special Court under the Protection of Children from Sexual Offences Act, 2012 (32 of 2012), wherever existing and where such Courts have not been designated, the Court of Sessions having jurisdiction to try offencs under the Act;

22. Under chapter-III Section 9(2), a Court is empowered to determine the age of the person who is a child or was a child

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on the date of commission of the offence. Section 9(2) reads as under;

> "9(2) In case a person alleged to have committed an offence claims before a Court other than a Board, that the person is a child or was a child on the date of commission of the offence, or if the Court itself is of the opinion that the person was a child on the date of commission of the offence, the said Court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) to determine the age of such person, and shall record a finding on the matter, stating the age of the person as nearly as may be:
>
> Provided that such a claim may be raised before any Court and it shall be recognised at any stage, even after final disposal of the case, and such a claim shall be determined in accordance with the provisions contained in this Act and the rules made thereunder even if the person has ceased to be a child on or before the date of commencement of this Act."

23. Immediately after sub-section (2) of Section 9, sub-section (3) states that if the Court finds that a person has committed an offence and was a 'child' on the date of commission of such offence, it shall forward the 'child' to the Board for passing an appropriate orders. Once the records are transferred and the child is sent to the Board for passing an appropriate order, the Board is empowered to make an inquiry in relation to such child under Sections 17 and 18 of the J.J. Act. However, sub-section (3) of Section 14 states that a preliminary

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assessment in case of heinous offence under Section 15 shall be disposed of by the Board within a period of three months from the date of first production of the child before the Board. This would bring us to Section 15 of the Act, which we reproduce hereunder for a ready reference:

> "**15. Preliminary assessment into heinous offences 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 sub-section (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.

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> Provided further that the assessment under this section shall be completed within the period of specified in section 14."

24. In the case of **Barun Chandra Thakur** (supra)**,** the Hon'ble Supreme Court has opined that the Board must conduct the preliminary assessment under Section 15 of the J.J. Act with the assistance of experienced psychologists or psycho-social workers or other experts. In this case, no such exercise has been undertaken before the Board. The learned Special Judge took upon itself to just record in one line that the accused understands the circumstances and consequences of commission of the offence and therefore, he could be tried as an adult. This is where the learned Special Judge has committed a grave error and proceeded to discard the mandatory provisions of law. The relevant paragraph of the judgment is reproduced herein-below for a ready reference;

> "**32.** Under the Juvenile Justice (Care and Protection of Children) Model Rules, 2016 (hereinafter referred to as "the Model Rules"), it is only Rule 10-A which refers to preliminary assessment into heinous offences by the Board. Sub-rule (1) mentions that the first thing to be determined by the Board is the age of the child as to whether he is below or above the age of 16 years which is to be done as per Section 14 of the Act. Sub-rule (2) mentions that the Board may take assistance of the experienced psychologists or psycho-social workers or other experts who have

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> experience of working with children in difficult circumstances. It also provides that the District Child Protection Unit would have a panel of such experts to be made available to the Board for its assistance or otherwise the Board could access such experts independently. Sub-rule (3) declares that the child shall be presumed to be innocent unless proved otherwise while making the preliminary assessment. Sub-rule (4) provides for the consequential order to be passed by the Board where it holds that the trial of the child is to be carried out as an adult for which, it is required to assign reasons and further to provide copy of order to the child forthwith.

25. In fact, the scheme of the J.J. Act would further show that even after the Board forms an opinion that a child, who has completed and is just above 16 years and has committed heinous crime is required to be tried as an adult, the final say is that of the Children's Court. Section 19 lays down the powers of Children's Court. We reproduce Section 19 of the J.J. Act, herein-below;

> "**19. Powers of Children's Court**.- (1) After the receipt of preliminary assessment from the Board under section 15, the Children´s Court may decide that-
> (*i*) there is a need for trial of the child as an adult as per the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) and pass appropriate orders after trial subject to the provisions of this section and section 21, considering the special needs of the child, the tenets of fair trial and maintaining a child friendly atmosphere;

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(*ii*) there is no need for trial of the child as an adult and may conduct an inquiry as a Board and pass appropriate orders in accordance with the provisions of section 18.

(2) The Children's Court shall ensure that the final order, with regard to a child in conflict with law, shall include an individual care plan for the rehabilitation of child, including follow up by the probation officer or the District Child Protection Unit or a social worker.

(3) The Children's Court shall ensure that the child who is found to be in conflict with law is sent to a place of safety till he attains the age of twenty-one years and thereafter, the person shall be transferred to a jail:

Provided that the reformative services including educational services, skill development, alternative therapy such as counselling, behaviour modification therapy, and psychiatric support shall be provided to the child during the period of his stay in the place of safety.

(4) The Children's Court shall ensure that there is a periodic follow up report every year by the probation officer or the District Child Protection Unit or a social worker, as required, to evaluate the progress of the child in the place of safety and to ensure that there is no ill-treatment to the child in any form.

(5) The reports under sub-section (4) shall be forwarded to the Children's Court for record and follow up, as may be required."

26. Section 21 Says that no child in conflict with law shall be sentenced to death or for life imprisonment without the possibility of release, for any such offence, either under the provisions of this Act or under the provisions of the Indian

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Penal Code or any other law for the time being in force.

27**.** In the case of **Lalu Kumar (supra),** the Hon'ble Division Bench has considered the scheme of Sections 15 and 18 of the J.J. Act. We would do no better than to reproduce those paragraphs here-under;

> "97. Section 15 of the Act of 2015, which enumerates special provisions to tackle the child offenders committing 'heinous offences' in the age group of 16 to 18years is equally important for us. If a child in the age group of 16 to 18 years is alleged to have committed 'heinous offence', as defined in Section 2(33) of the Act, the Board is required to conduct a preliminary assessment.
> 98. In order to determine, in case of a child in the age group of 16 to 18 years alleged to have committed a 'heinous offence', whether he should be transferred to the Children's Court to be tried as an adult, the Board has to follow certain essential steps.
> 99.Firstly, it must conclusively determines that the child in conflict with law before it is above the age of 16years, but below the age of 18 years on the date of commission of the offence. The determination of age is very crucial for the child as the same has the potential to expose him to the possibility of being transferred to the Children's Court to be tried as an adult.
> 100. Secondly, if the Board comes to the conclusion that the child before it was 16 years or above,but below the age 18 years on the date of commission of the offence, it would be required to conclusively determine whether the offence alleged to have been committed by him is a 'heinous offence' or not.
> 101. Thirdly, transfer of a child for trial as an adult

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can only be done after preliminary assessment by the Board. The word 'shall' in Section 15(1) indicates that it is mandatory for the Board to conduct 'preliminary assessment'. The 'preliminary assessment' has to be conducted to assess :-

(1) Child's mental and physical capacity to commit alleged offence;

(2) Child's ability to understand consequences of the offence; and

(3)the circumstances in which the child allegedly committed the offence.

102. Fourthly, after the preliminary assessment, the Board is required to further determine whether it would deal with the case of the child itself or transfer him to the Children's Court.

103. The aforesaid mandatory requirements areto be carefully conducted while determining whether a child should be transferred to the Children's Court to be tried as an adult or not. The legislature has provided that for the purpose of preliminary assessment the Board may take assistance of an experienced psychologist or psycho-social worker or other experts.

104. It needs to be kept in mind at this juncture that Section 14(3) of the Act of 2015 obligates that preliminary assessment in case of 'heinous offences' under Section 15 should be completed within three months by the Board from the date of first production of the child before the Board.

105. If the Board is satisfied on preliminary assessment that the matter should be disposed of by the Board then the Board shall follow the procedures, as far as may be, for trial in summons case under the CrPC. In case, the Board after preliminary assessment under Section 15 of the Act passes an order that there is need for trial of such child as an adult, it may order for transfer of the case to the Children's Court having jurisdiction to try such offence.

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115. Further Section 18(3) of the Act of 2015provides that where the Board, after preliminary assessment under Section 15 of the Act of 2015, comes to the conclusion that there is need for trial of the child as an adult,it may order, transfer of the trial of the case to the Children's Court having jurisdiction to try such offences.

116. The sixth question framed by us is in two parts. The first part is **"What is the scope of Section19(1)(i) of the Act of 2015 in connection with the trial of a child as an adult ?"** and the second part is **"Whether the provisions of Section 19 of the Act are mandatory or the Children's Court has to compulsorily follow the recommendations of the Board made under Section 15 read with Section 18(3) of the Act of 2015?"**

117. The answer to the above question will also be in two parts.

118. Upon a case of a child having been transferred to the Children's Court, a duty has been cast upon the Children's Court to further decide about the suitability of the child to be tried as an adult.

119. The words used in Section 19(1)(i) and19(1)(ii) give two options to the Children's Court. First, to try the transferred child as an adult and second not to deal with child as an adult.

120. The Children's Court is required to record its reason while arriving at a conclusion whether the child should be treated as a child or as an adult, in view of Rule13 (6) of the Rules.

121.**In case, the Children's Court decides to deal with child as a child, it has to conduct an inquiry as a Board following the procedures for trial of summons case in accordance with the provisions of Section 18 as would appear from the words used in Section 19(1)(i) of the Act of 2015**.

122. In case, it decides to try the child as an adult, it shall follow the procedures, as prescribed by the

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> CrPC for the purpose of trial by Sessions Court and pass appropriate orders after trial without prejudice to the provisions of Sections 19 and 21 of the Act considering special 'needs of the child' the tenets of 'fair trial' and maintaining a 'child friendly' atmosphere as provided under Section 19(1)(i) of the Act of 2015."

28. In our considered opinion, the impugned judgment and order suffers from serious infirmity as the mandatory procedures contained in Sections 15 and 19 of the J.J. Act have not been followed by the learned Special Judge. We, therefore, set aside the impugned judgment and order and remit the matter to the J.J. Board, Bettiah, West Champaran to start with the exercise under Section 15 of the J.J. Act and pass an appropriate order, in accordance with law, at the earliest, preferably, within a period of two months from the date of receipt of a copy of this judgment or in any case no longer the statutory period of three months.

29. The J.J. Board shall take assistance of the psychologist, psycho-social workers or any other experts in the assessment and would pass such order as the Board deems just and proper.

Further course of action will be consequential to the order passed by the learned J.J. Board.

30. Let the trial court records together with a copy of this

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judgment be sent down to the learned trial court from where the records shall be transmitted to the J.J. Board, Bettiah, West Champaran within a week from the date of receipt of the records.

31. The learned Principal District & Sessions Judge, Bettiah, West Champarana shall ensure that the records are sent to the J.J. Board within the given period through a special messenger.

32. This appeal is allowed to the extent indicated herein-above.

33. If occasions so arise, the fresh trial may be conducted and it will be open to the appellant to make application for bail before the competent court.

(Rajeev Ranjan Prasad, J)

(Praveen Kumar, J)

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