

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.365 of 2020**

Arising Out of PS. Case No.-193 Year-2019 Thana- DELHA District- Gaya

X7

... .. Petitioner

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Petitioner : Mr. Manish Kumar No.2, Advocate

For the Respondent : Mrs. Rita Verma, APP

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

11-11-2020

Heard learned counsel for the petitioner and learned counsel for the State via video conferencing.

2. Though the petitioner has given full description in the application, it would be inappropriate to disclose his identity in view of the statutory provisions prescribed under Section 74 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short 'the Act of 2015'). He is being referred to in the cause title as X7.

3. Registry while uploading the order on the website shall also ensure that the cause title is reflected in similar manner.

4. This criminal revision application has been preferred under Section 102 of the Act of 2015 against the judgment dated 13.02.2020 passed in Cr. Appeal No.8 of 2020



by learned Special Judge (Children Court), Gaya whereby the appeal preferred by the petitioner against the order dated 19.12.2019 passed in connection with Delha P.S. Case No.193 of 2019 registered under Sections 302 read with 34 of the Indian Penal Code, Section 27 of the Arms Act and Section 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act by the Juvenile Justice Board, Gaya, refusing prayer for bail of the petitioner has been dismissed.

5. The petitioner is lodged in the Observation Home at Gaya.

6. The Juvenile Justice Board, Gaya, vide order dated 06.11.2019 determined the age of petitioner as 16 years 5 months and 21 days on the date of occurrence on the basis of the matriculation certificate issued by the CBSE Board and declared him a child in conflict with law on the date of occurrence.

7. The prosecution case, as per fardbeyan of Bittu Paswan recorded on 11.07.2019 at 10:30 am by Arun Kumar, SHO of Delha Police Station at emergency ward, Anugrah Narayan Magadh Medical College and Hospital, Gaya, is to the effect that on 10.07.2019 at 08:00 pm while he was going on his motorcycle along with his brother, namely Amar Paswan, five persons, namely, Manoj Yadav, Kaushal Yadav,



Jahir Yadav @ Vikash Yadav @ Vikash Kumar, the appellant, Ritik Kumar and Lallu Paswan surrounded them. Thereafter, the accused Manoj Yadav ordered to kill his brother and fired, which hit Amar Paswan. In the meantime, other accused persons also opened fire. In order to save himself, he ran towards his house and came back along with other family members at the place of occurrence and found his brother Amar Paswan in an injured condition. The injured was taken to Magadh Medical College and Hospital, Gaya where he was declared dead.

8. The petitioner preferred his application for bail before the Juvenile Justice Board, Gaya, but the same was dismissed by the Board vide order dated 19.12.2019.

9. The petitioner assailed the order dated 19.12.2019 passed by the Juvenile Justice Board, Gaya in appeal vide Cr. Appeal (Juvenile) No.8 of 2020 before the learned Special Judge (Children Court), Gaya, who, vide impugned judgment dated 13.02.2020, upheld the order passed by the Juvenile Justice Board, Gaya and rejected the appeal preferred by the petitioner.

10. Learned counsel for the petitioner submitted that there is general and omnibus allegation against the petitioner. The petitioner is innocent and has falsely been



implicated in this case due to previous enmity. He contended that in course of investigation, no legal evidence has been collected against the petitioner except that he was only a member of the mob. According to him, there is land dispute between the informant and co-accused Manoj Yadav. He further contended that on perusal of the first information report, it appears that co-accused Manoj Yadav fired upon the brother of the informant as a result of which he sustained injury and subsequently died. He has further contended that other co-accused person namely, Jahir Yadav @ Vikash Yadav @ Vikash Kumar has been granted bail by a Bench of this Court vide order dated 27.05.2020 passed in Cr. Appeal (SJ) No.35 of 2020.

11. He submitted that neither the Juvenile Justice Board nor the Special Court could appreciate the ratio laid down by this Court in **Lalu Kumar & Ors. vs The State of Bihar & Ors.** reported in **2019(4) PLJR 833** while passing order on the application for bail of the petitioner.

12. He contended that seriousness of the offence alleged cannot be made a ground for rejection of prayer for bail in the case of a child in conflict with law. Moreover, there was no material before the court below to come to the conclusion that his release would expose him to moral, physical or



psychological danger.

13. Learned counsel for the State has opposed the prayer for grant of bail to the petitioner.

14. The social investigation report as discussed in the order dated 19.12.2019 passed by the Juvenile Justice Board, Gaya whereby the prayer for bail of the petitioner was rejected discloses that the deceased was of criminal nature and was involved in illegal liquor trade, dacoity etc and was having bad relation with several persons. The report further discloses that the petitioner appears to be innocent and has falsely been named in this case. It is surprising that having noticed the social investigation report, the Juvenile Justice Board rejected the prayer for bail of the petitioner on the ground that the allegations against the petitioner are heinous in nature.

15. The ambit and scope of Section 12 of the Act was under consideration before a Division Bench of this Court in **Lalu Kumar** (supra).

16. In paragraphs 84 to 86 of the aforesaid judgment this Court observed:

“84. While interpreting Section 12, the Board is duty bound to be guided by the fundamental principles enumerated in Section 3 of the Act of 2015, specially the principles of ‘best interest’, ‘repatriation’



and 'restoration' of child. The fundamental principles in Section 3(xii) provides that a child shall be placed in institutional care as a step of last resort after making a reasonable inquiry. The gravity and nature of the offence are immaterial for consideration of bail under the Act of 2015. As per Section 12 of the Act of 2015, an application for bail is not decided by reference to classification of offences, as bailable or non-bailable under the Cr.P.C. All persons alleged to be in conflict with law and apparently a child when apprehended must be released except in the following three circumstances when there is reasonable ground for believing that :-

- (i) The release is likely to bring that person into association with any known criminal;
- (ii) The release is likely to expose the said person to moral or psychological danger; and
- (iii) The release would defeat the ends of justice.

85. In all cases, the Board is required to record its reason, if it refuses to release the child on bail and the circumstances that laid to such a decision. Taking surety is not essential for ordering release of the child on bail. The child may be released without surety also. The child may be placed under the supervision of a 'probation officer' or



under the care of any ‘fit person’ after release on bail. It further provides that in case the court has directed release of the child on bail after fulfilling certain conditions, but the child is unable to fulfill those conditions in the next seven days, the Board shall modify those conditions.

86. The Board is vested with the power to grant bail to any person, who has not completed the age of 18 years irrespective of the nature of offence being ‘bailable’ or ‘non-bailable’ or specified in any of three categories of the Act, as ‘petty offences’, ‘serious offences’ and ‘heinous offences’.”

17. The Division Bench further considered whether the seriousness of the offence alleged is a ground for rejection of the bail of a child in conflict with law. It held that seriousness of the offence alleged cannot be made a ground for rejection of prayer for bail in the case of child in conflict with law for simple reason that the principle of bail under the Act of 2015 is not the same as enumerated under Chapter XXXIII of the Cr.P.C. Bail and not institutionalization continues to be the principle under the Act.

18. The impugned order would reveal that the Juvenile Justice Board and the appellate court rejected the prayer for bail of the petitioner taking into consideration the



seriousness of allegation and the other grounds referred to in the proviso to sub-section (1) of Section 12 of the Act of 2015. However, there was also no material before the court below to believe that release of the petitioner would bring him into association with any known criminals. There was also no material to come to the conclusion that release of the petitioner would expose him to moral, physical or psychological danger. The court below has also not assigned any reason as to how in the event of grant of bail the ends of justice would be defeated. Thus, there could have been no application of the grounds of Section 12 of the Act of 2015 in case of the petitioner. The Juvenile Justice Board and the appellate court also failed to keep in mind the observations made by a Division Bench of this Court in the case of Lalu Kumar (Supra) wherein it has been clearly held that nature of the offence cannot be a ground for refusing bail to a child in conflict with law.

19. For the reasons noted above, the impugned judgment dated 13.02.2020 passed in Cr. Appeal No.8 of 2020 by learned Special Judge (Children Court), Gaya arising out of Delha P.S. Case No.193 of 2019 is not sustainable in law as it is not consistent with the aims and object of Section 12 of the Act of 2015.



20. Accordingly, the impugned judgment dated 13.02.2020 passed in Cr. Appeal No.8 of 2020 by learned Special Judge (Children Court), Gaya is set aside. Consequently, the order dated 19.12.2019 passed in Delha P.S. Case No.193 of 2019 by the Juvenile Justice Board, Gaya, is also set aside.

21. The petitioner, who has been held to be a child in conflict with law and whose age has been determined to be 16 years, 5 months and 21 days on the date of occurrence, is directed to be released on bail on furnishing bail bond of Rs.10,000/- (Rupees ten thousand) with two sureties of the like amount each to the satisfaction of Juvenile Justice Board, Gaya in connection with Delha P.S. Case No.193 of 2019.

22. The revision application stands allowed.

23. Since the court proceedings are being conducted through virtual mode and normal court functioning has not been restored till date, it is considered appropriate to adopt the following procedure for communication of the present order:-

- (i) The order, which has been dictated during the course of proceeding of the virtual court, shall be communicated to me on my e-mail by the Sr. Secretary.



- (ii) The corrected copy of the order shall be transmitted by me from my e-mail id to the Sr. Secretary, which shall be treated to be an authentic copy of the order passed by this Court in the present proceeding.
- (iii) Hard copy of the order duly signed by me shall be preserved in my residential office for documentation and future use, if any.
- (iv) Let steps be taken by the Sr. Secretary/registry for uploading of the present order without compromising with the norms of social distancing.

(Ashwani Kumar Singh, J.)

sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	23.11.2020
Transmission Date	23.11.2020

