

(2020) 11 PAT CK 0068

Patna High Court

Case No: Criminal Revision No. 367 Of 2020

X And Anr

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision: Nov. 12, 2020**Acts Referred:**

- Juvenile Justice (Care And Protection Of Children) Act, 2015 - Section 74, 102
- Indian Penal Code, 1860 - Section 34, 302

Hon'ble Judges: Ashwani Kumar Singh, J**Bench:** Single Bench**Advocate:** Satyendra Rai, Sanjay Kumar**Final Decision:** Allowed

Judgement

1. Heard learned counsel for the petitioners and learned counsel for the State via video conferencing.

2. Though the petitioners have given full description in the application, it would be inappropriate to disclose their 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"). They

are being referred to in the cause title as X and Y respectively.

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

4. The instant criminal revision application has been preferred by the petitioners under Section 102 of the Act of 2015 challenging the order dated

03.03.2020 passed in Cr. Appeal No.6 of 2020 by the learned Additional Sessions Judge-1st, Gopalganj whereby the order dated 08.01.2020 passed by

the Juvenile Justice Board, Gopalganj in J.E. No.122 of 2019 arising out of Bhore P.S. Case No.315 of 2019 registered for the offence punishable

under Section 302/34 of the Indian Penal Code has been affirmed and the appeal preferred by the petitioners has been dismissed.

5. The mother of the deceased Vidyavati Devi had lodged a case alleging therein that after dinner, her son went to his hut to sleep. Later on, in the morning, she found the dead body of her son in a pool of blood. It appears to her that somebody killed her son in the night. She expressed her suspicion on three friends of the deceased including the petitioners and one Neeraj Gond, who were present with the deceased in the night.

6. The petitioners were apprehended on 28.09.2019. They claimed themselves to be juvenile on the date of commission of offence. The Juvenile

Justice Board, Gopalganj determined the age of petitioner no. 1 X to be 16 years, 5 months and 24 days on the date of commission of the offence vide

order dated 23.10.2019. The Board also determined the age of petitioner no. 2 Y to be 16 years, 4 months and 3 days on the date of commission of the offence vide order dated 25.11.2019.

7. The petitioners moved for grant of bail before the Juvenile Justice Board, Gopalganj. The Board rejected their application for bail vide order dated 08.01.2020.

8. Being aggrieved by the order dated 08.01.2020 passed by the Juvenile Justice Board, Gopalganj, the petitioners preferred appeal in the court of 1st

Additional Sessions Judge, Gopalganj. The appellate court vide order dated 03.03.2020 dismissed the appeal and upheld the order passed by the Juvenile Justice Board.

9. Being aggrieved by the order dated 03.03.2020 passed by the appellate court, the petitioners have moved the present revision application before this Court.

10. Mr. Satyendra Rai, learned counsel appearing for the petitioners submitted that the order impugned passed by the appellate court is not sustainable

in the eyes of law. He contended that both the Juvenile Justice Board and the appellate court have failed to appreciate the statutory provisions

prescribed under the Act of 2015 and the ratio laid down by the this Court in *Lalu Kumar & Ors. vs. The State of Bihar & Ors.* reported in 2019(4)

PLJR 833. He further contended that the courts below erred in appreciating the fact that merely because social investigation report reflected that the petitioners were not being looked after properly by their parents, the same could not have been a ground to come to the conclusion that the release of the petitioners would bring them into association with any known criminal or expose them to moral, physical or psychological danger or their release would defeat the ends of justice. He has further contended that similarly circumstanced co-accused Neeraj Gond has already been granted bail by a Bench of this Court vide order dated 06.03.2020 passed in Cr. Misc. No.79295 of 2019.

11. Learned counsel for the State has opposed the application and submitted that there no infirmity in the order passed by the appellate court. He contended that the appellate court has appreciated the facts and law involved in the case properly and has rejected the appeal on the basis of social investigation report which suggested that the release of the petitioners would bring them into association of known criminals.

12. Having heard the parties and perused the material on record, I am of the opinion that the appellate court and the Juvenile Justice Board did not appreciate social investigation report submitted by the probation officer properly. The social investigation report simply suggested that in order to keep the petitioners out of illegal activities, proper counseling is required as they are not being properly looked after by their parents. In my opinion, such a report cannot be made a ground for keeping a juvenile in conflict with law in observation home. The Act of 2015 provides that institutionalization of a child in conflict with law is a matter of last resort. The nature of offence cannot be made a ground to refuse bail to a juvenile in conflict with law as held by the Division Bench of this Court in *Lalu Kumar & Ors. (Supra)*. There is also no definite material to suggest that the petitioners, who were friends, had actually participated in the commission of the offence. Their involvement in the case is merely on suspicion. Moreover, co-accused whose case is identical to that of the petitioners has already been granted bail by a co-ordinate Bench of this Court.

13. Keeping these facts into mind, the order impugned cannot be sustained.

12. Accordingly, the order dated 03.03.2020 passed in Cr. Appeal No.6 of 2020 by the learned Additional Sessions Judge-1st, Gopalganj is set aside.

Consequently, the order dated 08.01.2020 passed by the Juvenile Justice Board, Gopalganj in J.E. No.122 of 2019 arising out of Bhore P.S. Case

No.315 of 2019 rejecting the prayer for bail of the petitioners is also set aside.

13. The petitioners are directed to be released on bail on furnishing bail bond of Rs.10,000/-(ten thousand) each with two sureties of the like amount

each to the satisfaction of the Juvenile Justice Board, Gopalganj in connection with Bhore P.S. Case No.315 of 2019.

14. The revision application stands allowed.

15. 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 judgment, 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 judgment 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 judgment 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 up-loading of the present order without compromising with the norms of social distancing.