

X9 Vs State Of Bihar

Court: Patna High Court

Date of Decision: Sept. 10, 2020

Acts Referred: Juvenile Justice (Care And Protection Of Children) Act, 2015 " Section 3, 12, 12(1), 74, 102

Indian Penal Code, 1860 " Section 147, 148, 149, 302

Arms Act, 1959 " Section 27

Scheduled Caste And Scheduled Tribe (Prevention Of Atrocities) Act, 1989 " Section 3(ii)(v)

Hon'ble Judges: Ashwani Kumar Singh, J

Bench: Single Bench

Advocate: Satyapal Singh, Sadanand Paswan

Final Decision: Allowed

Judgement

1. Heard learned counsel for the parties 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 X9.

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 Juvenile Justice (Care & Protection of Children) Act, 2015 against

the judgment dated 04.02.2020 passed in Cr. Appeal No.3 of 2020 by learned Additional District and Sessions Judge-1st -cum-Special Judge, Buxar

whereby the appeal was dismissed against the order dated 18.12.2019 passed in J.J.B. Case No.638 of 2019 arising out of Buxar (Town) P.S. Case

No.237 of 2019 registered under Sections 147, 148, 149, 302 of the Indian Penal Code, Section 27 of the Arms Act and Section 3(ii)(v) of the

Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act by the Juvenile Justice Board, Buxar, refusing prayer for bail of the

petitioner.

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

6. The Juvenile Justice Board, Buxar, vide order dated 28.11.2019, determined the age of petitioner as 15 year, 06 months and 09 days on the date of

occurrence on the basis of the school admission register produced by the Incharge Headmaster, Sahyogi Middle School, Naya Bazar. Hence, he was

declared a juvenile in conflict with law on the date of occurrence.

7. The prosecution case is based on the fardbeyan of one Ruby Devi given before Police Officer (Town) Police Station, Buxar stating therein that on

15.03.2019 her brother-in-law (Dewar), namely, Mangan Ram used to sell egg everyday in front of his house. She has further stated that at about 5:30

p.m, accused persons namely, Chhedi Yadav, Mohan Kumar @ Dewan, Harendra Yadav, Dipu Kumar, Sonu Kumar, Rakesh Kumar, Budhau, Banti

Yadav and Amit Srivastava came to the egg shop of her Dewar and they abused him and ordered to provide eggs. Thereupon, her Dewar said as to

why they have abused him. Upon this, the accused Chhedi Yadav fired upon her Dewar Mangan Ram and after that, all the accused persons fled

away. Due to the firearm injury caused to her Dewar, he fell down. She further stated that the family members and nearby people brought the injured

to Sadar Hospital, Buxar for medical treatment where the doctor declared him brought dead.

8. The petitioner is in custody since 19.03.2019. His prayer for bail was rejected by the Juvenile Justice Board vide order dated 18.12.2019.

9. He assailed the aforesaid order dated 18.12.2019 in appeal vide Cr. Appeal No.03 of 2020 before the learned 1st Additional District & Sessions

Judge-cum-Special Judge, Buxar, who vide impugned order dated 04.02.2020, upheld the order passed by the Juvenile Justice Board, Buxar and

rejected the appeal preferred by the petitioner.

10. Learned counsel for the petitioner submitted that there is no specific allegation against the petitioner that he assaulted the deceased. The specific

allegation of causing gunshot injury to the deceased is against one Chhedi Yadav. He contended that the name of the petitioner has been given in this

case at the instance of his enemies. He further contended that the similarly circumstanced co-accused, namely, Deepu Kumar @ Shyam Bihari Ram

@ Sham Bihari Ram, Rakesh Kumar @ Rakesh Kumar Ram and Mohan Kumar @ Devan Mohan Kumar @ Divau having more or less identical

allegation to that of the petitioner have already been granted bail by a co-ordinate Bench of this Court vide orders dated 17.09.2019, 24.10.2019 and

05.11.2019 passed in Cr. Appeal (SJ) No.3930 of 2019, Cr. Appeal (SJ) No.4850 of 2019 and Cr. Appeal (SJ) No.4697 of 2019 respectively.

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 argued 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. It would be evident from order of the Juvenile Justice Board that the prayer for bail of the petitioner was rejected on the ground that the release of

the appellant may expose him with bad elements of the society, which will cause to the danger of his life as well as a turmoil in society. The appellate

court has rejected his appeal on the aforesaid ground.

15. The ambit and scope of Section 12 of the Act was under consideration before a Division Bench of this Court in *Lalu Kumar & Ors. vs. The State*

of Bihar & Ors. (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. As noted above, the impugned order would reveal that the seriousness of the allegation and the other instances referred to in the proviso to sub-

section (1) of Section 12 of the Act of 2015 prevailed upon the mind of the appellate court and the Juvenile Justice Board in refusing the prayer for

bail of the petitioner. There was also no material before the court below to believe that the release of the petitioner would bring him into association

with any known criminals. There was no material to come to the conclusion that release would expose the petitioner 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.

19. For the reasons noted above, the impugned judgment dated 04.02.2020 passed in Cr. Appeal No.3 of 2020 by learned Additional District and

Sessions Judge-1st -cum-Special Judge, Buxar 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 04.02.2020 passed in Cr. Appeal No.3 of 2020 by learned Additional District and Sessions Judge-1st -

cum-Special Judge, Buxar is set aside. Consequently, the order dated 18.12.2019 passed in J.J.B. Case No.638 of 2019 arising out of Buxar (Town)

P.S. Case No.237 of 2019 by the Principal Magistrate, Juvenile Justice Board, Buxar is also set aside.

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

the satisfaction of Juvenile Justice Board, Buxar in Buxar (Town) P.S. Case No.237 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 judgment, which has been dictated during the course of proceeding of the virtual court, shall be communicated to me on my email by the Sr.

Secretary.

(ii) The corrected copy of the judgment shall be transmitted by me from my email 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 a copy of the judgment be sent to Mr. Satyapal Singh, learned counsel for the petitioner also on his email.

(v) Let steps be taken by the Sr. Secretary/registry for up-loading of the present judgment without compromising with the norms of social distancing.