

(2019) 12 PAT CK 0245

In the Patna High Court

Case No : Criminal Revision No. 134 Of 2019

Hamid Ahmad @ Rumani S/O Nasim

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 19-12-2019

Acts Referred:

Indian Penal Code, 1860 — Section 34, 302, 379

Juvenile Justice Board (Care And Protection Of Children) Act, 2015 — Section 12, 12(a)

Citation : (2020) 1 PLJR 275

Hon'ble Judges : Mohit Kumar Shah, J

Bench : Single Bench

Advocate : Sanjeev Kumar Jha, Aditya Narayan Singh

Final Decision : Dismissed

Judgement

1. The present petition has been filed against the order dated 8.10.2018 passed by the learned Additional Sessions Judge 1st cum Special Judge, (Children Court), District- Darbhanga (Bihar) whereby and whereunder the prayer of the petitioner for grant of regular bail, in connection with Child Protection Act Case No. 02 of 2018, arising out of Darbhanga Town P.S. Case No. 95 of 2017, for the offence under Sections 302/34 of the Indian Penal Code, has been rejected.

2. The case of the prosecution as per the fardbeyan of the informant dated 16.6.2017 is that the informant, namely, Md. Arif was at his home on 15.6.2017 and at about 10:00 PM in the night, the accused persons, namely, Mona @ Monu @ Ehsan and the petitioner herein had come at his house and after calling his son, had taken his son away, however, when his son did not come back, the informant is said to have conducted a search along with his relatives and during the course thereof, he came to know that a dead body of one boy was lying behind Uma cinema and thereupon, the informant is said to have gone there and had found that the dead body of his son smeared with blood was lying there. It is the allegation of the informant that his son has been killed by the petitioner and the other co-accused person.

3. The learned counsel for the petitioner has submitted that the petitioner is a juvenile and he has been falsely implicated in the present case on account of enmity and personal grudge and in fact, the petitioner has got no role to play in the alleged murder of the son of the informant, however, his name has been dragged in the present case merely on suspicion. It has been further submitted that the petitioner is languishing in custody since 17.6.2017.

4. The learned counsel for the petitioner has referred to a judgment reported in 2017(2) PCCR 238 (PHC) (Pramendra Chaudhary @ Parmendra Chaudhary vs. The State of Bihar), paragraphs nos. 7 and 8 whereof are reproduced hereinbelow:-

"7. Be that as it may, on merits. I find force in the submission of the learned counsel for the petitioner. The preamble of the Act reads as under:-

"An Act to consolidate and amend the law relating to juveniles in conflict with law and children in need of care and protection, by providing for proper care, protection and treatment by catering to their development needs, and by adopting a child-friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation and for matters connected therewith or incidental thereto."

8. The language of Section 12 of the Act is couched in such manner that the prayer for bail of a juvenile in conflict with law can be rejected only under three eventualities, i.e., (i) in case the release is likely to bring the juvenile into association with known criminals; or (ii) expose him to moral, physical or psychological danger; or (iii) that his release would defeat the ends of justice."

5. I have heard the learned counsel for the petitioner and it appears that the learned court of CJM, Darbhanga by an order dated 31.7.2017, relying on the birth certificate produced on behalf of the petitioner herein showing his date of birth as 20.4.2001 and finding the petitioner to be prima facie a minor on the date of occurrence i.e. 16.6.2017, on which date the age of the petitioner was 16 years 1 month and 26 days, directed to separate the case record of the petitioner and send the splitted case record along with bail petition of the petitioner to the Juvenile Justice Board, Darbhanga for determination of age and further directed the Jail Superintendent, Darbhanga to shift the petitioner to Observation Home at Juvenile Justice Care Protection Board at Darbhanga. Thereafter, a case bearing Case No. 678 of 2017 (State Versus Hamid Ahmad @ Rumani) was registered before the Juvenile Justice Board, Darbhanga and the Board vide order dated 26.2.2018 directed to transfer the case record along with the juvenile for further needful proceedings to the Children's court in view of the following finding arrived at by the said Board:-

"Upon considering the above facts and circumstances board is of view that the said juvenile seems physically and mentally capable to commit and understand the consequences of offence as alleged. Hence, there is a need for trial of the said juvenile as an adult. Accordingly it is judicious and in the interest of justice

that the said trial along with juvenile be transferred to the children's court within per view of J.J.Act, 2015 having jurisdiction to try such offence."

6. The matter had then travelled before the learned court of 1st Additional Sessions Judge-cum-Special Judge (Children Court), District-Darbhanga (Bihar) and a case was instituted bearing Child Protection Act Case No. 2 of 2018 (State vs. Hamid Ahmad) and the said court by an order dated 20.8.2018 held as follows:-

"I have heard the learned lawyers of both the parties and perused the case record of Juvenile Justice Board received in this court and materials available on the record on the point of juvenality related to the juvenile in conflict with law. From perusal of case record, it appears that photo copy of birth certificate of the juvenile issued by Registrar, Statistics Department, Darbhanga is available on the record in which date of birth of the juvenile in conflict with law namely Hamid Ahmad is 20.4.2001 and the date of occurrence is 16.06.2017 and hence, on the date of occurrence the juvenile in conflict with law was 16 years 01 months 26 days. The said juvenile in conflict with law appeared before this court and find the juvenile in conflict with law Hamid Ahmad was 16 years 01 month 26 days old on the date of alleged occurrence and this case is related to offence u/s 302/34 IPC which is heinous offence. Hence, considering the submissions of both parties and entire materials available on the case record, it appears that the mental faculty of the said juvenile is completely matured and general mental ability of the said juvenile is of such a level that he could easily comprehend and understand the consequences of the alleged crime and nature of offence committed. It would not be said and may not be concluded in all probabilities that he has committed the offence under guise of juvenility of a immatured, innocent and noble understanding.

Considering the above facts and circumstances discussed above and materials available on case record and also order dated 26.02.2018 passed by J.J.B., Darbhanga I find that the Juvenile Justice Board, Darbhanga has rightly passed order dated 26.02.2018 and forwarded this case and juvenile conflict with law for trial to this court as an adult and also in my opinion there is need for trial of the said juvenile as an adult as per provision of Code of Criminal Procedure 1973 (2 of 1974) in this Children Court."

7. The lower court records would bear it out that a social investigation report for children in conflict with law pertaining to the petitioner herein has been submitted by the Probation Officer, Home (Jail) Department, Darbhanga dated 15.11.2017 wherein it has been stated that apart from the father and mother, the petitioner has two brothers and three sisters, one brother is working at Bangalore engaged in the work of crane servicing while the second brother is studying at Millat College. The relationship amongst the family members has been found to be cordial and the present living condition has been found middle class. In the said report, it has been further stated that during the course of inquiry, it has transpired that the father and mother of the petitioner are

prestigious people, however, the petitioner had become victim of wrong company, hence, his energy is required to be diverted towards positive direction like commercial / professional work, hence, the Juvenile Justice Board can give the petitioner the benefit of the Juvenile Justice Act and the petitioner can also be sent for supervision by the Probation Officer.

8. This Court has also perused the report submitted by the Superintendent, Observation Home, Darbhanga with regard to the character / conduct of the petitioner herein. In the said report dated 23.2.2018, it has been stated that the petitioner is present in the Observation Home, Darbhanga since 9.8.2017 and he has been an active member of the Mess Committee, Gardening Committee, Health Committee and Cleaning Committee of the Observation Home. It has been also stated that the petitioner cooperates with the other inmates of the Observation Home and he is having a religious and down to earth nature. It is also submitted in the said report dated 23.2.2018 that the petitioner, from time to time, participates in all the programmes organized at the Observation Home and he has got a social thought and behaviour, hence, for the bright future of the petitioner, it is necessary that he is imparted technical training so that he can contribute in the mainstream of the society. Lastly, it is stated in the said report that the conduct of the petitioner with the other inmates has been good.

9. Now coming to the investigation conducted by the police, which is apparent from the case diary, the police has found that the case to be prima facie true under Section 302/34 of the Indian Penal Code against the petitioner herein, as also against the co-accused and has submitted a charge-sheet dated 30.6.2017 under Section 302/34 of the Indian Penal Code against both the accused persons including the petitioner herein. A bare perusal of the case diary shows that there are ample materials so as to corroborate the complicity of the petitioner in the alleged crime and in fact, in his confessional statement, the petitioner herein has admitted to have given repeated blows on the person of the deceased apart from the co-accused having also given dagger blows on the person of the deceased resulting in death of the deceased. In paragraph no. 20 of the case diary, a seizure list has been referred to and the seizure list has been also annexed to the case diary which shows that one iron dagger (knife) smeared with blood was recovered from the house of the petitioner. This Court further finds that the petitioner has a criminal antecedent inasmuch as he is an accused in Laheriasarai P.S. Case No. 540 of 2014 under Section 379 of the Indian Penal Code wherein charge-sheet has also been submitted as against the petitioner dated 31.1.2015.

10. I have heard the learned counsel for the parties and I find that though the mandate of Section 12(a) of the Juvenile Justice Board (Care and Protection of Children) Act, 2015 is to release a person, who is apparently a child and is alleged to have committed a bailable or non-bailable offence, and is apprehended or detained by the police or appears or is brought before a Board, with or without surety, however, the said provision of law further provides that such person shall not be so released if there appears reasonable grounds for believing that the

release is likely to bring him into association with any known criminal or expose him to moral, physical or psychological danger or the person's release would defeat the ends of justice.

11. This Court finds that the petitioner is alleged to have committed a gruesome murder and from perusal of the postmortem report, it appears that 9 incised wounds were found over the dead body of the deceased, caused by sharp cutting weapon and the death had occurred on account of hemorrhage and shock due to such injuries. The witnesses have also supported the allegations levelled against the petitioner, as is apparent from the case diary and the police, upon investigation, has also submitted a charge-sheet against the petitioner and the other co-accused person under Section 302/34 of the Indian Penal Code and accordingly, cognizance of the offence has been taken against the petitioner and the co-accused person and charges have also been framed under Sections 302/34 and 201/34 of the Indian Penal Code against the petitioner. The prayer for bail, made on behalf of the petitioner herein, was first of all rejected by the Juvenile Justice Board, Darbhanga by an order dated 23.2.2018 on the ground that a heinous crime has been committed by the petitioner, his complicity is writ large from the records, the release of the petitioner may result into revengeful action by the other side and may also lead to further chances of committing other heinous crime and further, it may endanger the juvenile in conflict with law morally, physically and psychologically.

12. Thereafter, it appears that the petitioner had filed an application for bail before the learned court of 1st Additional cum Special Judge (Child Court), District-Darbhanga and the same has been also rejected by the impugned order dated 8.10.2018.

13. Considering the facts and circumstances of the case coupled with the fact that the petitioner has been alleged to have committed a gruesome murder and also taking into account the fact that there are ample materials in the case diary to prima facie suggest the complicity of the petitioner in the said gruesome murder, the weapon i.e. the dagger / knife, smeared with blood, said to be the weapon used for stabbing the deceased victim has been recovered from the house of the petitioner, the petitioner is involved in one other criminal case under Section 379 of the Indian Penal Code wherein the police has also submitted charge-sheet and the family of the petitioner is an average middle class family having several members inasmuch as the petitioner has been stated to be having two more brothers and three sisters apart from his father and mother, this Court finds that the release of the petitioner would defeat the ends of justice, in view of the aforesaid materials available on record, as also the fact that the petitioner has got a criminal antecedent and further since the charges have already been framed and the trial is under way, it would be prudent to keep the petitioner in the Observation Home. Consequently, the present revision petition stands dismissed, however, with a direction to the learned court below to expedite the trial and ensure completion of the same, preferably within a period of nine

months from today.