

(2020) 09 PAT CK 0088
In the Patna High Court
Case No : Criminal Revision No. 358 Of 2020

X8

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 25-09-2020

Acts Referred:

Juvenile Justice (Care And Protection Of Children) Act, 2015 — Section 74, 101, 102
Indian Penal Code, 1860 — Section 399, 402
Arms Act, 1959 — Section 25(1B)(a), 26
Code Of Criminal Procedure, 1973 — Section 438(2)

Citation : (2020) 09 PAT CK 0088

Hon'ble Judges : Ashwani Kumar Singh, J

Bench : Single Bench

Advocate : Ansul, Sharda Kumari

Final Decision : Allowed

Judgement

1. Filing through email of the present application has been accepted in view of the out-break of COVID-19 Pandemic and has been posted before me for hearing through video conferencing.
2. The application is apparently not in accordance with the provisions prescribed under the Patna High Court Rules, which do not contemplate filing of application through email. In spite of that, considering the extra-ordinary situation, filing of the present application has been allowed through email.
3. Considering the situation prevailing, the Court has considered, for the present, to ignore the deficiency in filing of the application.
4. Heard learned counsel for the petitioner and learned counsel for the State.
5. 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 X8.

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

7. This criminal revision application has been preferred under Section 102 of the Juvenile Justice (Care & Protection of Children) Act, 2015 against the judgment dated 03.06.2020 passed in Cr. Appeal (Juvenile) No. 26 of 2020 by the Children's Court, Gaya whereby it has rejected the appeal preferred by the petitioner under Section 101 of the Act of 2015 and upheld the order dated 08.05.2020 passed by the Juvenile Justice Board, Gaya in connection with Bodh Gaya P.S. Case No. 131 of 2013 registered under Sections 399 and 402 of the Indian Penal Code and Section 25(1-B)(a) and 26 of the Arms Act refusing prayer for bail of the petitioner.

8. The prosecution case is based on the written report of one Pawan Kumar, Assistant Sub-Inspector of Police, Bodh Gaya. He had submitted his written report on 11.06.2013 at 10:30 p.m. with respect to the occurrence which had taken place on the same day at about 05:00 p.m. In his written report, he has stated that he received confidential information that some miscreants have assembled in order to commit dacoity at IAS colony, Domuhan, Bodh Gaya. Upon receipt of such information, a raiding party was constituted and the police party arrived at the place of occurrence. They found some miscreants, who started fleeing away on seeing the police party. Upon chase, one of them was apprehended and the other 5-6 miscreants managed to escape. Upon search, a country made loaded pistol and cartridges were found from the possession of the arrested accused. He also named five other persons including the petitioner as his associates.

9. Apprehending his arrest, the petitioner moved an application for grant of pre-arrest bail before this Court vide Cr. Misc. No. 52111 of 2013, which was allowed vide order dated 06.03.2014 observing as under:-

" Considering the facts and circumstances of the case, in the event of his arrest or surrender before the court below within four weeks, let the petitioner abovenamed be enlarged on bail on furnishing bail bond of Rs. 10,000/- (Ten Thousand only) with two sureties of the like amount each to the satisfaction of the Chief Judicial Magistrate, Gaya in connection with Bodh Gaya P.S. Case No. 131 of 2013, subject to condition laid down under Section 438 (2) of the Code of Criminal Procedure with additional condition to remain physically present before the court below on each and every date at least for two years or till disposal of the case, whichever is earlier and in case of failure on two consecutive dates without giving any reasonable explanation, the liberty granted shall be deemed to be cancelled."

10. The petitioner did not comply with the condition upon which the pre-arrest bail was granted to him. He did not surrender before the court below for quite a long time. Thus, he could not enjoy the privilege of pre-arrest bail granted to him

vide aforesaid order passed by this Court. Subsequently, he was arrested in another case and remanded in the present case on 26.02.2020. Thereafter, he filed an application claiming himself to be a juvenile in conflict with law on the date of commission of the offence.

11. The Juvenile Justice Board, Gaya determined the age of the petitioner to be 17 years and 3 months vide order dated 05.05.2020 on the date of commission of the offence.

12. Thereafter, the petitioner filed an application for bail before the Juvenile Justice Board, Gaya. The Juvenile Justice Board, Gaya rejected the prayer for bail of the petitioner vide order dated 08.05.2020 considering the social investigation report and the involvement of the petitioner in three other cases.

13. Social investigation report has also been brought on record as Annexure-3 to the present application.

14. The analysis of the case, including reasons/contributing factors for the offence has been recorded in column 6 of the said report prepared by the Probation Officer and recommendation regarding rehabilitation of the petitioner has been recorded in column 8 of the social investigation report, which read as under:-

"6. Analysis of the case, including reasons / contributing factors for the offence:-

अपराधी किशोर का प्रस्तुत मामला 2013 के थाना कांड संख्या 131/2013 बोधगया से संबंधित है। यह पता चला है कि अपने दोस्त के संग में आकर बोधगया क्षेत्र में बैठकर किया करता था। पुलिस को प्रशासन ने तहकीकात करके किशोर के आचरण पर संदेह करते हुए मुकदमा किया गया।"

"8. Recommendation regarding rehabilitation by Probation Officer/Child Welfare Officers:-

प्रस्तुत वाद के सामाजिक जांच में यह मालूम हुआ है कि आपराधिक किशोर वर्तमान में एक adult लड़का है यह पाया गया है कि किशोर के बाल अवस्था में गार्जियन के द्वारा उचित परवरिश एवं संरक्षण नहीं मिला, जिसके कारण बचपना समझ में गलती सही का ज्ञान नहीं रहा अब अपनी मर्जी से Life Span किया। जानकारी यह भी प्राप्त हुई है कि वर्तमान तक अपराधी किशोर एक से अधिक मुकदमा में अभियुक्त है। माननीय Board से अनुरोध है कि Case-Diary का अवलोकनार्थ जो आदेश प्राप्त होगी मान्य है।"

15. Thereafter, the petitioner challenged the order of the Juvenile Justice Board before the Children's Court. The Children's Court vide impugned order dated 03.06.2020 dismissed the appeal and upheld the order passed by the Juvenile Justice Board, Gaya. The observations made by the Children's Court for rejecting the bail application are as under:-

"From perusal of Social Investigation Report, it appears that due to parental neglect, he indulged himself in the world of crime. He is under peer group influence. His friends are older in age. It appears that he has bad company of criminal youth and under their influence. He has involved himself in so many criminal occurrence of grievous nature and has criminal antecedent and bad

company".

Thus, considering the above discussed facts and circumstances & social investigation report, I finds no element of reform in appellant/C.I.C.L. and he might again come in association with his friends, who were also accused in this case and might have commit other grievous offence and allowing this appeal would defeat the ends of justice and the purpose of reform in the petitioner will not take place and would be against the interest of the C.I.C.L./Appellant. So, I do not find any illegality in the order dated 08.05.2020 of the J.J.B., Gaya passed in Bodh Gaya P.S. Case No. 131 of 2013".

16. Mr. Ansul, learned counsel appearing for the petitioner submitted that the petitioner is absolutely innocent. He has falsely been implicated in this case merely on the confession made by a co-accused. There is no recovery of any incriminating material from his possession. His involvement in three other cases is also based on suspicion and confession made by the co-accused persons. He contended that the petitioner was a juvenile in conflict with law at the relevant time when the pre-arrest bail was granted to him in the present case itself by this Court, he could not appreciate the import of the order in correct perspective and was under an impression that the Court had granted him pre-arrest bail and he was not required to appear before the court or furnish bail bond. His non-appearance at that point of time has put him in the present situation when he is languishing in jail for about seven months even though he had been granted pre-arrest bail on merits.

17. He further contended that if the social investigation report submitted by the Probation Officer is appreciated properly, it would appear that the petitioner is not of a criminal bent of mind. He submitted that in column 21 of the social investigation report the Probation Officer has recorded that the petitioner is a religious person and always performs puja etc. He submitted that the appellate court as also the Juvenile Justice Board have failed to appreciate the considerations relevant for grant of bail in case of a juvenile in conflict with law. They have mechanically rejected the bail of the petitioner without appreciating the ratio laid down by this Court in *Lalu Kumar & Ors. vs. The State of Bihar & Ors.* reported in 2019(4) PLJR 833.

18. On the other hand, learned counsel appearing for the State has opposed the application for grant of bail to the petitioner. She submitted that the petitioner is involved in three other cases and, therefore, the court below has rightly rejected his bail application. She has further contended that the petitioner has got no respect for law and has evaded to appear before the court inspite of having been granted pre-arrest bail in the year 2013 itself.

19. Regard being had to the totality of the facts and circumstances of the case, especially the social investigation report submitted by the Probation Officer, I am of the opinion that the court below ought to have granted bail to the petitioner whose name has transpired in the confession made by an arrested accused in

connection with a case under Sections 399 and 402 of the Indian Penal Code as well as under Section 25(1-B)(a) and 26 of the Arms Act and from whom no incriminating material was ever recovered.

20. Accordingly, the impugned judgment dated 03.06.2020 passed in Cr. Appeal (Juvenile) No. 26 of 2020 by the Children's Court, Gaya is set aside. Consequently, the order dated 08.05.2020 passed by the Juvenile Justice Board, Gaya in Bodh Gaya P.S. Case No. 131 of 2013 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, Gaya in Bodh Gaya P.S. Case No. 131 of 2013.

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 judgment:-

(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 judgment 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. Ansul, 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.