

Birendra Yadav Vs. State of Bihar

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Court : Patna

Decided On : Jul-12-1994

Judge : P.K. Sarin, J.

Appeal No. : Criminal Misc. No. 5756 of 1994

Appellant : Birendra Yadav

Respondent : State of Bihar

Advocate for Pet/Ap. : Mr. Khan

Disposition : Petition Rejected

Judgement :

P.K. Sarin, J.

1. The bail petition of the petitioner has been rejected twice by this Court. However, while rejecting (he second bail petition of the present petitioner on 16.11.1993 in Cr. Misc. No. 11697 of 1993, this Court directed the learned Magistrate to constitute a Medical Board and after taking into consideration the legal evidence as would be forthcoming for determination of the age of the petitioner, the learned Magistrate was directed to pass such order as he may deem fit and proper. This direction was made because it appeared that the point as to age of the petitioner was not at all considered and the petitioner raised the

plea that he was a juvenile. It appears that thereafter the learned Magistrate determined the age of the petitioner on the basis of the examination report of the Medical Board and the age of the petitioner was found to be 14 to 16 years. However, he was not released on bail. Thereafter it appears that the petitioner moved a petition for bail (under Section 439 of the Code of Criminal Procedure) before the Sessions Judge, who by his order dated 21.3.1994 has rejected the same and now the petition under Section 439 of the Code of Criminal Procedure before this Court.

2. I have heard Mr. M. Salahuddin Khan, Senior Advocate, appearing for the petitioner and have perused the order passed by the learned Sessions Judge and the petition along with its annexures. learned Counsel has contended that the bail petition under Section 439 of the Code of Criminal Procedure is maintainable before this Court and this Court can pass the order under the Juvenile Justice Act (hereinafter to be referred to as 'the Act') in the present proceeding by virtue of the provisions contained in Section 7(3) of the Act.

3. This is special Act for dealing with negligent juvenile and delinquent juveniles 'Delinquent Juvenile' within the meaning of the said Act is a person, who is below 16 years of age (in case of male) and who is alleged to have committed any offence. Under the Act no trial in accordance with the provisions of the Code of Criminal Procedure can take place. Instead an enquiry as provided under Section 39 of the Act can be made and after making enquiry the juvenile court may pass order as has been provided in various sections of the Act but in no case the juvenile may be ordered to undergo imprisonment and the juvenile cannot be tried along with other person, who is not a juvenile. There is specific provision for release on bail as has been provided under Section 18 of the Act. Under Section 37 of the Act there is a provision for appeal by a person aggrieved by the order passed by the competent authority. 'Competent authority' under the Act includes a juvenile court as constituted under Section 5 of the Act or a Magistrate exercising the powers of a juvenile court in the area, under Section 7(2) of the Act, for which no juvenile court has been constituted. Therefore, the order of rejection of the bail petition by the Magistrate exercising the power of a juvenile court by virtue of Section 7(2) of the Act was appealable. Hence, when an appeal is provided there

was no occasion for moving the petition under Section 439 of the Code of Criminal Procedure before the Sessions Judge. The High Court has been given power of revision only Section 4 of the Code of Criminal Procedure lays down that the provisions of the Code of Criminal Procedure shall apply in respect of trial, investigate and enquiry under the Code of Criminal Procedure. In case of juvenile there is no trial in accordance with the provisions of the Code of Criminal Procedure. As such, in my opinion, provision of Section 439 of the Code of Criminal Procedure is not available to a juvenile to move a petition for bail before the Sessions Judge or before the High Court.

4. Mr. Khan appearing for the petitioner has contended that Section 7(3) of the Act provides that when the matter goes before the High Court in revision or 'otherwise', the High Court may exercise powers of a juvenile court, as such, in the present proceeding under Section 439 of the Code of Criminal Procedure, the High Court may exercise powers and grant bail to the petitioner under Section 18 of the Act by virtue of the word 'otherwise' in Section 7(3) of the Act. I am unable to agree with the learned Counsel. For exercising the powers as provided under Section 7(3) of the Act, the condition precedent would be that the proceeding before the High Court itself is maintainable. When the proceeding before the High Court itself is not maintainable. When the proceeding before the High Court itself is not maintainable no question arises for exercising powers of juvenile court by virtue of Section 7(3) of the Act merely on the ground that word 'otherwise' has been used in that section. The present proceeding under Section 439 of the Code of Criminal Procedure is not maintainable before the High Court, as such the contention of learned Counsel does not find favour to exercise the power under Section 18 of the Act. The bail petition being not maintainable under Section 439 of the Code of Criminal Procedure, is rejected.