

GAHC010076512023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Bail Appln./1338/2023

HARUN RASHID

S/O- SAAN MIYA, R/O- NO. 2 BORCHOLA, P.S. LAHORIGHAT, DIST.-
MORIGAON (ASSAM).

VERSUS

THE STATE OF ASSAM
REP. BY P.P., ASSAM

Advocate for the Petitioner : MR. M BISWAS

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN
ORDER

02.05.2023.

Heard Mr. M. Biswas, learned counsel for the petitioner. Also heard Mr. P.S. Lahkar, learned Addl. P.P., Assam appearing for the State respondent.

2. This application, under Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015, (herein after the Act) is preferred by one Child Conflict with Law (CCL) namely Mr. X, (name withheld) in view of section 3(xi) of the said Act and also in view of the law laid down by Hon'ble Supreme Court in

Shilpa Mittal vs. NCT Delhi, reported in **(2020) 2 SCC 787**, which mandated that identity of the child cannot be disclosed, who has been languishing in Observation Home, Jorhat, since 22.08.2022, in connection with the Special (P) Case No.65/2022, under Section 376 of the IPC, read with Section 4 of the POCSO Act, corresponding to Dergaon P.S. Case No.73/2022, for grant of bail.

3. It is to be noted here that the aforementioned case has been registered on the basis of an FIR lodged by one Meherula Nissa of Rajabahar Gaon, under Dergaon Police Station, on 26.04.2022. The allegation, leveled against the CCL is that on the night of 26.04.2022, at about 12 AM, he has committed rape upon the minor daughter of the complainant Smti. 'Y', (name withheld) in her compound, while she went outside her house to attend the call of the nature.

4. Mr. Biswas, learned counsel for the CCL, submits that this is the second application filed by the CCL and the earlier one, being BA No. 2883/2022, was rejected by this court after perusing the case diary, vide order dated 05.12.2022, as on that occasion the matter was not placed properly before this court resulting dismissal of the petition. Mr. Biswas further submits that admittedly the petitioner is a child and section 12 of the Act, does not authorize the court below to keep CCL in detention for indefinite period, and irrespective of the nature and gravity of the offence, so committed by him, he shall be released on bail. Mr. Biswas further submits that the child has been languishing in Observation Home, Jorhat, since 22.08.2022, and in the meantime, investigation of the case has already been completed and charge sheet has been laid before the learned court below and now the case is pending for preliminary assessment of the CCL, and that he is ready to face trial. Mr. Biswas also referred one case law, **Dattatray G. Sankre vs. State of Maharashtra &**

Ors. reported in **2003(3) Crimes 311**, to contend that- where juvenile is involved in a crime, normal rule would be to grant bail, unless Juvenile Board comes to conclusion that by release such a juvenile would come in contact with known criminals. Referring another case law, **Inderjit Singh vs. State of Punjab** reported in **2013 0 Supreme (P & H) 1036**, Mr. Biswas contends that- court has the discretion to ordinarily release a juvenile on bail but can also be declined if it has reasonable ground to believe that his release is likely to bring him in association with any known criminal or expose him to moral, physical and psychological danger or would defeat the end of justice. Under the aforesaid facts and circumstances Mr. Biswas contended to allow this petition.

5. Whereas, Mr. P.S. Lahkar, the learned Addl. P.P. has vehemently opposed the petition as the offences committed by the CCL is very serious and he committed the same in a planned manner, and having considered all aspect this court has rejected his bail petition on earlier occasion and no convincing ground has been assigned to consider the same again. Mr. Lahkar further submits that the learned court below also rejected the bail application by a reasoned order. Therefore, it is contended to dismiss the petition.

6. Having heard the submission of learned Advocates for both sides, I have carefully gone through the petition and the documents placed on the record. Also carefully gone through the scanned copy of the case record of Special (P) Case No.65/2022, and also perused the case diary, and the Social Investigation Report of the Child, submitted by the Probation Officer, Morigaon, from which the CCL hails from, which are available on the record. Perused the Social Background Report also submitted by Child Welfare Police Officer and also the relevant provision of law.

7. Section 12 of the said Act, read as under:-_

12. Bail to a person who is apparently a child alleged to be in conflict with law.-

(1) When any person, who is apparently a child and is alleged to have committed a bailable or non-bailable offence, is apprehended or detained by the police or appears or brought before a Board, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, be released on bail with or without surety or placed under the supervision of a probation officer or under the care of any fit person:

Provided that such person shall not be so released if there appears reasonable grounds for believing that the release is likely to bring that person into association with any known criminal or expose the said person to moral, physical or psychological danger or the person's release would defeat the ends of justice, and the Board shall record the reasons for denying the bail and circumstances that led to such a decision.

(2) When such person having been apprehended is not released on bail under sub-section (1) by the officer-in-charge of the police station, such officer shall cause the person to be kept only in an observation home in such manner as may be prescribed until the person can be brought before a Board.

(3) When such person is not released on bail under sub-section (1) by the Board, it shall make an order sending him to an observation home or a place of safety, as the case may be, for such period during the pendency of the inquiry regarding the person, as may be specified in the order.

(4) When a child in conflict with law is unable to fulfill the conditions of bail order within seven days of the bail order, such child shall be produced before the Board for modification of the conditions of bail.

8. A cursory perusal of the Section 12 of the Act reveals that right of the CCL to be released on bail under Section 12 of the Juvenile Justice Act is not absolute. It is subject to the proviso to the said section, which provides that such person shall not be so released, if there appears reasonable grounds for believing that the release is likely to bring that person into association with any known criminal or expose the said person to moral, physical or psychological danger or the person's release would defeat the ends of justice. Thus, as submitted by Mr. Biswas, it is not the absolute proposition of law that irrespective of the nature and gravity of the offence committed by the child, he shall be released on bail.

For the aforesaid reason, the submission of Mr. Biswas, left this court unimpressed.

9. Here in this case, indisputably, the petitioner is a CCL and he has been languishing in Observation Home, Jorhat since 22.08.2022. It also appears from the scanned copy of the record of the learned court below that investigation of the case has already been completed and charge sheet has been laid before the learned court below against him, to stand trial under section 376 of the IPC, read with Section 4 of the POCSO Act.

10. It also appears from the record that the learned court below, while rejecting the bail petition of the child, has observed that - there is probability that if the CCL is released on bail/zimma, he may, on coming in contact with society, be exposed moral, physical and psychological danger as the offence alleged to be committed is of such nature and moreover, the CCL requires more institutional counseling and psychological conditioning. The learned counsel for the child has submitted that such an observation is made by the learned court below without any foundation and the learned Addl. P.P. also fairly conceded absence of foundational fact to arrive at such a conclusion, from the materials available on the record of the learned court below. And this court also, having carefully gone through the Social Investigation Report of the Probation Officer of Morigaon, District found the finding so recorded is based on surmise and conjecture. Said report also indicates that he has no antecedent of any criminal activities. There is also nothing on the record to demonstrate that the person's release would defeat the ends of justice. The counseling report of the child, submitted by Counsellor, Observation Home, Jorhat, indicates that he was found to be very sad and worried for the incident.

11. Having considered the submission of learned Advocates of both sides and

also considering the facts and circumstances on the record as well as the object, sought to be achieved by the Act, and also following the fundamental principles, required to be followed in administration of Act, as provided in section 3 of the said Act, this court is inclined to record imprimatur to the submission, so advanced by Mr. Biswas, the learned counsel for the CCL.

12. This court is, however, not oblivious of the right and interest of the victim of the crime and her tender age as well as the interest of the society. Undoubtedly, the offence is serious in nature. It was also committed in a planned manner and the learned Addl. P.P. has rightly pointed this out during argument.

13. Notwithstanding, this court is inclined to allow this petition, having balanced the aforementioned facts and circumstances of the victim, with that of the period of detention of the child, which is more than 8 months, and also considering the best interest of the child. Accordingly, it is provided that on furnishing a bond of Rs. 25,000/, with one surety of like amount, to the satisfaction of learned Presiding Judge, Children Court, Golaghat, the child be enlarged on bail. The learned court below will be at liberty to impose any condition(s) to secure his presence during hearing of the case.

14. The learned court below shall also comply with the mandate of section 13(2) of the said Act.

JUDGE

Comparing Assistant