

Court No. - 78

Case :- CRIMINAL APPEAL No. - 7759 of 2023

Appellant :- X-Y Juvenile

Respondent :- State Of U.P. And 3 Others

Counsel for Appellant :- Hari Bans Singh, Dharm Jeet Singh

Counsel for Respondent :- G.A., Rajesh Kumar Singh

Hon'ble Raj Beer Singh, J.

1. Heard learned counsel for the appellant, learned counsel for the informant and learned A.G.A. for the State.

2. This criminal appeal has been preferred under Section 101(5) of The Juvenile Justice (Care and Protection of Children) Act (hereinafter referred as J.J. Act) against the order dated 30.06.2023, passed by the learned Special Judge (POCSO Act)/ Additional Sessions Judge Court No.8, Ballia in case crime number 46/2023, under section 377/506 IPC and section 5M/6 POCSO Act, P.S. Rasara, District Ballia, whereby, the bail application of juvenile/appellant has been rejected.

3. Learned counsel for appellant submitted that appellant is innocent and he has been falsely implicated in this case. The first information report was lodged making false and baseless allegations. During investigation, the appellant was declared juvenile by the Juvenile Justice Board vide order dated 29.05.2023, however, the Juvenile Justice Board has referred the case of appellant to the court of Special Judge POCSO Act/Children Court for trial as an adult. Learned counsel submitted that the appellant is a juvenile and thus, in view of provisions of Section 12 Juvenile Justice Act, the appellant is entitled to be released on bail. The victim has not sustained any serious injury and that there is no F.S.L. report to suggest that victim was molested. It is further submitted that in fact the father of appellant

runs a rickshaw and only a dispute has taken place in the issue of fare and that the appellant has been falsely implicated in this case. Lastly, it was submitted that appellant is in custody since 31.01.2023.

4. Learned A.G.A and learned counsel for the informant have opposed the appeal and submitted that victim is a seven years old boy and he has made clear statement that appellant has sexually molested him and due to that he suffered bleeding. The version of victim is fully supported by medical evidence. It was submitted that in view of age of victim and the nature of accusations, the appellant is not entitled to be released on bail.

5. I have considered rival submissions and perused the record.

6. It appears from record that after registration of case against the appellant, he claimed juvenility and the J.J. Board found that at the time of incident, the appellant was aged 16 years 6 months and 11 days and thus, he was declared juvenile by order dated 29.05.2023, passed by the J.J. Board. Later on, in view of provisions of section 15 and 18(3) of J.J. Act, the case of the appellant was referred to the Children Court for trial as an adult. Section 15 of the J.J. Act only provides for transfer of a juvenile to the Children Court for trial as an adult, where the age of child is between 16 to 18 years and he has been alleged to have committed heinous offence, the J.J. Board is required to conduct a preliminary inquiry with regard to his mental and physical capacity to commit offence, ability to understand the consequence of the offence and the circumstances in which the offence was committed considering their physical, psychological and mental status in commission of crime. Section 18(3) of the J.J. Act provides that after making the assessment under section 15 of J.J. Act, the J.J. Board comes to a conclusion that there is a need for trial of the child as an adult, the J.J. Board

may pass an order for the transfer of the trial of the case to the Children Court.

7. In the instant matter, one of the question that arises for consideration is that while a juvenile is being tried by the Children court as an adult in terms of section 18(3) of J.J. Act, whether bail plea on behalf of such juvenile has be considered on the criteria and parameters envisaged in Section 12 of the J.J. Act?

8. In case of **Sachin Yadav (Juvenile) V State of U.P. and Another** (supra), the Co-ordinate Bench of this Court held under:

"Section 15 of the Amending Act only provides for transfer of a juvenile to the Children Court for trial as an adult. Where the child has attained the age of 16 years and has been alleged to have committed heinous offence, the J.J. Board is required to conduct a preliminary inquiry with regard to his mental and physical capacity to commit offence, ability to understand the consequence of the offence and the circumstances in which the offence was committed considering their physical, psychological and mental status in commission of crime. Section 18(3) of the Act provides that after making the assessment under section 15, J.J. Board comes to a conclusion that there is a need for trial of the child as an adult, the Board may pass an order for the transfer of the trial of the case to the Children Court.

It is pertinent to mention here that Section 12 of the Juvenile Justice (Care and Protection of Children) Act has not been amended so far as the parameters and yardstick for granting bail to the juvenile-accused is concerned. Therefore, while rejecting the bail application of such juvenile, it cannot be the criteria that the alleged offence is of serious and heinous nature. The order must show that the grant of bail to the juvenile-accused is against his interest as there is possibility of his being associated with known criminals, or there is some short of moral, physical or psychological danger to him or there is likelihood of end of justice being defeated.

All these conditions have been incorporated in law in order to ensure justice to the juvenile."

09. Thus, it is the consistent view that bail plea of a juvenile, aged between 16 to 18 years, who is being tried by the Children Court as an adult, has to be considered at the anvil and parameters as prescribed under section 12 of of J.J. Act. As per the provisions of Section 12 of the J.J. Act, when any person accused of a non-bailable offence and apparently a juvenile, is arrested or detained or is brought before a board then irrespective of the accusation he

shall be released on bail or placed under the supervision of a probation officer or under the care of any fit institution or fit institution except when :-

i. if there appear reasonable grounds for believing that the release is likely to bring him into association with any known criminals or

ii. that it will expose him to moral, physical or psychological danger, or

iii. that his release would defeat the ends of justice.

10. In the instant matter, as stated above, victim is seven years old minor child and it appears that he was brutally sexually molested and he has suffered injuries including bleeding. Considering the entire facts of the matter, it appears that release of appellant on bail would defeat the ends of justice. The trial court has considered the entire facts of the matter in correct perspective and that there is no material illegality or perversity in the impugned order.

11. The appeal has no substance and thus, liable to be dismissed. However, in case no substantial progress is made in the trial within a period of six months from today, the appellant would be at liberty to move a fresh appeal/bail application in accordance with law.

12. With aforesaid observations, the appeal is **dismissed**.

Order Date :- 12.10.2023

Neeraj