

Court No. - 16

Case :- CRIMINAL APPEAL No. - 335 of 2024

Appellant :- Sirtaj @ Taj Thru. Brother Aijaz

Respondent :- State Of U.P. Thru. Prin. Secy. Home Lko. And Another

Counsel for Appellant :- Rajendra Prasad Mishra

Counsel for Respondent :- G.A., Mohammad Airaj Siddiqui, Ramakar Shukla

Hon'ble Mohd. Faiz Alam Khan, J.

(In Re:- C.M. Application No. 1 of 2024)

1. No one is present for the opposite party no.2 while the name of Shri Mohammad Airaj Siddiqui and Shri Ramakar Shukla as printed in the cause list.
2. Heard Shri Rajendra Prasad Mishra, learned counsel for the appellant as well as learned A.G.A. appearing for the State and perused the record.
3. This criminal appeal has been preferred by the appellant/ **Sirtaz @ Taj** for setting aside the impugned order dated 18.12.2023 passed by Children Court/ Special Judge, POCSO Act Balrampur passed in Bail Application No. 1511 of 2023, Crime No. 94/ 2022, under Sections 302, 307, 147, 323, 504, 506 I.P.C., P.S. Lalia, District Balrampur.
4. Learned counsel for the appellant while drawing the attention of this Court towards the FIR and other relevant documents available on record, submits that it is a case of false implication. General role of assault has been assigned to the named accused persons in the FIR as well as in the statement of the witnesses who are claiming themselves to be the eye witnesses of the crime.
5. It is vehemently submitted that during the course of investigation the appellant was declared juvenile, however, in pursuance of the exercise undertaken by the Court under Section 15 of the Juvenile Justice Act, 2015 he was assessed to be having intellect of an adult and therefore this case was committed to the court of session.
6. It is vehemently submitted that though the trial of the appellant is being done as an adult but the same would itself be

not sufficient to deny the other privilege which may be enjoyed by a juvenile in conflict with law under Juvenile Justice Act, 2015.

7. Elaborating further, it is submitted that the age of the appellant has been determined as 17 years and 7 days and thus the provision of Section 12 of the Juvenile Justice (Care and Protection of Children), Act, 2015 would be applicable and the facility of bail may only be denied to a juvenile if his case is falling in any of disqualification provided under Section 12 of the Juvenile Justice Act.

8. It is vehemently submitted that identically placed co-accused has been granted bail by order dated 17.10.2023 passed by the Juvenile Justice Board, Balrampur and his role was also identical so far as the role of the appellant is concerned.

9. It is vehemently submitted that the Children Court has committed manifest illegality in ignoring the report submitted by the District Probation Officer wherein no apprehension was shown pertaining to release of appellant on bail and the Children Court appears to have adopted a hyper technical view and at the stage of bail the welfare of the juvenile is of paramount importance and other things including the heinousness of the crime may not be given much importance.

10. It is also submitted that appellant is in Reformatory Home since 3.7.2022 and having regard to the fact that identically placed Juvenile has been granted bail, the similar facility be also granted to the appellant and it is undertaken that the appellant after taking the custody of the appellant would not permit him to be associated with any person of bad character and also adhere to be other condition which may be imposed by the Court.

11. Learned AGA on the other hand submits that there is no illegality so far as the rejection of bail by the Children Court is concerned as the Children Court has considered the welfare of the juvenile and noticing the fact that his close relatives are in jail and are of bad characters, refused the facility of bail which could not be termed as either illegal or irregular on the facts and circumstances of the case.

12. Having heard learned counsel for the parties and having perused the record, it is reflected that the general role of taking part in the alleged crime has been assigned to all the accused persons named in the FIR. Similar role has been assigned in the statement of witnesses who has claimed themselves to be the eye witnesses of the alleged crime and there is no dispute

pertaining to the fact that the appellant has been declared juvenile in conflict with law and his age has been assessed as 17 years while the co-accused who has been granted bail vide order dated 17.10.2023 passed by the Juvenile Justice Board, Balrampur was also declared juvenile, however, of the age of 16 years and his case is being tried by the Juvenile Justice Board. There cannot be any doubt that the parameters which have been highlighted under Section 12 of the Juvenile Justice Act, 2015 would be applicable so far as the appellant is concerned. The juvenile in conflict with law may only be denied the facility of bail if there is reasonable ground for believing that his release is likely to bring him in association with known criminals and would otherwise expose him to moral, physical or psychological danger or otherwise to meet the ends of justice. Thus the heinousness of the offence or its gravity would not be a governing force so far as the adjudication of plea of bail of juvenile in conflict of law is concerned. It is also not a dispute that the report of District Probation Officer is also in favour of the appellant, however, the same has been rejected by the Children Court by stating that the connivance of the appellant with other co-accused persons who are his close relatives has not been highlighted in its report.

13. Having taken into consideration all the relevant facts and circumstances of this case, this Court is not of any other view than expressed by the Juvenile Justice Board, Balrampur pertaining to the plea of bail of co-accused, which has been denoted therein with the word 'A' as his role and other surrounding facts and circumstances of the case are identical to the instant appellant as the other accused person named in the First Information Report and have also been charge sheeted are close relatives of each other. Therefore, it could not be said that it is only the appellant before this Court who is having his closed relatives as co-accused persons of this Crime.

14. Before proceeding further it is also fruitful to reproduce Section 12 (1) of The Juvenile Justice (Care and Protection of Children) Act, 2015, which speaks about the conditions pertaining to the release of juvenile on bail as under:

Sec.12(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)...

(3)...

(4)...

14. The issue whether the bail can be denied to a juvenile going by the gravity of the offence, the nature of the crime and so to speak by considering the merits of the prosecution case, has been considered on many occasions by this Court in the following cases:

Hon'ble Allahabad High Court in *Bhola @ Satender v/s State Of U.P.* 2015 (2) JIC 38(Allahabad) has held as under :-

"The Criminal Procedure is a beneficial and social ? oriented legislation, which needs to be given full effect by all concerned whenever the case of juvenile comes before them. In absence of any material or evidence or reasonable ground to believe that the delinquent juvenile, if released on bail, is likely to come into association with any known criminal or exposing to moral, physical or psychological danger, it cannot be said that his release would defeat the ends of justice." Similar view has been expressed by the Hon'ble Allahabad High Court in *Mukesh v/s State of UP* 2015 (2) JIC page 740 (Allahabad).

Hon'ble Allahabad High Court in *Ranjit Yadav v/s State Of UP*, 2015 (2) JIC page 738(Allahabad), has also opined that :-

" gravity of the offence is not a ground to deny bail to a juvenile accused, unless the conduct of the accused is such that it indicates that in all likelihood, after being released on bail, a juvenile in conflict with law will indulge into more crime and there are imminent chances of his repeating the crime, bail to a juvenile shall not be ordinarily refused.

In *Ajay @ Abhinay Kumar v/s State of UP* 2015 (2) JIC page 223 (Allahabad), Hon'ble High court expressed its view as under :-

"once a person is held to be a juvenile in conflict with law then section 12 of the Act would govern the question of grant of bail and the custody of juvenile, it will not be covered by the

provisions of the Code of Criminal Procedure. It is noteworthy that the gravity or seriousness of the offence, divorced from the above exceptional reasons has not been taken as an obstacle or hindrance by the legislature to refuse bail to delinquent. No straitjacket formula of inflexible nature can be laid down as it would depend on the facts and circumstances of each case. Words 'and so justice' should be confined to those facts which show that grant of bail itself is likely to result in injustice. For example, if there is likelihood of juvenile delinquent to whom the bail is granted, interfering with the Courts (course) of justice or he may pressurize the prosecution witnesses, he is likely to abscond from the jurisdiction of the Court, then the burden to show that if the delinquent juvenile is released on bail, there appears reasonable ground for believing that the release is likely to bring him into association with any known criminal or exposing to moral, physical or psychological danger or that his release would defeat the ends of justice is on the prosecution."

Hon'ble Supreme Court in the case of **Om Prakash Vs. State of Rajasthan and Ors reported in (2012) 5 SCC 201** however has brought in due concern in matter relating to juvenile where the alleged offences committed by the juvenile are heinous like rape, murder, gang rape etc and has indicated that in such matters the nature and gravity of the offences would be relevant and the minor (juvenile) can not getaway by shielding himself behind the veil of minority. It was held by their Lordship that Juvenile Justice Act was enacted with a laudable object of providing a separate forum for holding trial of children by the juvenile court as it was felt that children became delinquent by force of circumstances and not by choice. Hence, they need to be treated with care and sensitivity, while dealing and trying cases of criminal nature. But when an accused is alleged to have committed heinous offence like rape and murder or any other grave offence when he seizes to be a child on attaining the age of 18 years, but seeks protection of the Juvenile Justice Act under the ostensible plea of being a minor, should such an accused be allowed to be tried by a Juvenile Court or should he be referred to a competent court of criminal jurisdiction. It is further highlighted by their Lordship by above mentioned decision that if the conduct of an accused or the method and manner of the commission of the offence indicates evil and well planned design of the accused committing the offence, which indicates more towards the mature skill of an accused than that of a innocent child, then in the absence of any reliable documentary evidence in support of the age of the accused, medical evidence indicating that the accused was a major, cannot be allowed to be ignored by taking shelter of the

principle of beneficial legislation like the Juvenile Justice Act subverting the court of justice, which is meant for minors or innocent law breakers and not accused of mature mind who uses the plea of minority as a ploy to shield and protect himself from the sentence of the offence committed by him.

15. The above case laws thus suggest that no strait jacket formula maybe invented for grant or refusal of facility of bail to juvenile in conflict with law and it will depend on the fact and circumstances of each case as well as the manner and method whereby the alleged offence has been committed by the juvenile to gauge as to whether the act of the juvenile attracting penal consequences, has been done with sufficient maturity, skill and evil design, which can be attributed only to a major person or whether the penal act of the juvenile is an act of an innocent law breaker. Needless to say that every case will have to be decided on its merits, demerits and evidence which is being placed against the juvenile as well as the previous criminal history of the juvenile. The gravity of the offence certainly cannot be the sole guiding factor, but the manner and method of the commission of the offence could certainly be taken into consideration while deciding the plea of bail of a juvenile.

16. In view the totality of facts including the report of District probation officer, it appears in the interest of justice and juvenile that keeping an eye on the beneficial purpose of juvenile justice Act, a chance to reform may be provided to Juvenile/ Appellant. The Probation Officer in his report has not mentioned any fact or circumstance which may suggest that there is any likelihood of juvenile coming in association of any criminal, if released on bail or likelihood of exposing him to any moral, physical or psychological danger. Therefore, in absence of any such circumstance, it was obligatory on the Court below to consider the report of District Probation Officer in right perspective. The learned Court below was required to infer from the positive evidence or material available on record, as if any of the grounds enumerated under section 12 of the Juvenile Justice Act 2015, were available, on the basis of which bail could be denied to Juvenile, and if these ground(s) were not existing, the juvenile should have been released on bail, acting otherwise would defeat the beneficial purpose of juvenile justice Act. In absence of any such material on record and also in the background of the report of the District Probation officer, the impugned order rejecting bail of accused/ appellant, is not sustainable and the same is not in conformity with the beneficial provisions of the Juvenile Justice Act. The impugned order, therefore deserves to be set aside and the appeal is worth allow.

17. For the reasons mentioned herein above, I find force in the appeal and the same is **allowed**. The order dated 18.12.2023 passed by Children Court/ Special Judge, (POCSO Act), whereby the bail application of juvenile Appellant was rejected, is set aside.

18. Let Juvenile **Siraj @ Taj** be enlarged on bail, in the above mentioned case on executing a personal bond of Rs. 70,000/-, by him as well his guardian/natural brother Aijaz with two reliable sureties each in the like amount to the satisfaction of the Court concerned and on submission of undertaking on affidavit by his guardian/natural brother that he will take due care of the juvenile/appellant, and will not allow him to indulge in unlawful or criminal activity or join the company of unlawful elements and will keep him under strict control, failing which the facility of bail granted to Juvenile will be canceled.

Order Date :- 8.4.2024

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