



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.09.2016

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CORAM:

THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM

Cr1.O.P. (MD) .No.17574 of 2016

1.Minor Muthuraj
S/o.Nagaraj,
rep. by his father Nagaraj

2.Minor Esakimuthu
S/o.Arichandran,
rep. by his father Arichandran

.. Petitioners/A3&A5

Vs.

The Inspector of Police,
Seevalaperi Police Station,
Tirunelveli.
(Crime No.123 of 2016)

.. Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to direct the Juvenile Justice Board, Tirunelveli to consider the bail application of the petitioners herein on the same day of surrender pertaining to the Crime No.123 of 2016 on the file of the respondent Police.

For Petitioners : Mr.P.Samuel Gunasingh

For respondent : Mr.K.Anbarasan
Government Advocate(Criminal side)

ORDER

It is an application seeking a direction to the Juvenile Justice Board, Tirunelveli, to pass orders on the bail petition filed by the petitioners, on the same day of their appearance in Crime No.123 of 2016 on the file of the respondent Police. A case has been registered against the petitioners, who are stated to be aged 17 years , under Section 379 IPC and Section 3 of Tamil Nadu Public Property (Prevention of Damage and Loss) Act, 1992.

2.Heard the learned counsel for the petitioners and the learned Government Advocate (Cr1. Side) for the respondent.

<https://hcservices.ecourts.gov.in/hcservices/>

3. The case of the prosecution is that all the accused have committed theft of sand by using JCB machine.



6. When a specific question was posed as to why a direction is required in a case where bail is mandatory under Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as "the Act"), the learned counsel for the petitioner submitted that the bail application of the juvenile is not being considered on the same day of appearance, as the Juvenile Justice Board wants the report of the Probation Officer before the grant of bail and that compels the minor to stay in Observation Home which the petitioner wants to avoid. Under such circumstances, this application for direction is taken up.

"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.



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(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 fulfil 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. Section 12 of the Act does not contemplate obtaining of report of the Probation Officer before the grant of bail. If the Juvenile Justice Board is not granting bail, the alternative option open to the Juvenile Justice Board is to place the Juvenile under the supervision of a Probation Officer.

9. Bail can be refused under the proviso to Section 12 of the Act, only if the release is likely to bring the juvenile into the association with any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice. In other circumstances, so far juveniles are concerned, grant of bail is the rule and non grant of bail is only an exception.

10. Under such circumstances, the petitioners are directed to appear before the Juvenile Justice Board within ten days from the date of receipt of a copy of this order and file bail application. The Juvenile Justice Board is directed to consider and pass orders on the bail application of the petitioners on merits on the same day of their appearance.

11. This Criminal Original Petition is accordingly disposed of.

Sd/

Assistant Registrar(T&P)



To

1.The Inspector of Police,
Seevalaperi Police Station,
Tirunelveli.

2.The Juvenile Justice Board,
Tirunelveli.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1CC to M/S.P.Samuel Gunasingh,Advocate, SR.No. 53231

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PJL

AM/SS3/SAR-I/27.09.2016/4P/5C (IT)