Serial No. 01
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl.Rev.P. No. 8 of 2020

Date of Decision: 12.11.2020

Shri. Ngaitlang Suchiang Vs. State of Meghalaya & Anr.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. T.L. Jyrwa, Adv.
For the Respondent(s) : Mr. A. Kumar, AG. with
Ms. Z.E. Nongkynrih, GA. for R 1 & 2.
Mr. S.A. Sheikh, Adv. for R 3.

i) Whether approved for reporting in Law journals etc.: Yes/No

ii) Whether approved for publication in press: Yes/No

1. Matter has been taken up via video conferencing.

2. This instant revision petition was preferred under Section 102 of the Juvenile Justice (Care and Protection) Act, 2015 assailing the order dated 28.09.2020 passed by the learned Principal Magistrate, Juvenile Justice Board, Khliehriat in the East Jaintia Hills District of Meghalaya in Khliehriat P.S Case No. 34(9) of 2020 under Section 376(1) IPC read with Section 3(j) (ii) 5, 6, of the POCSO Act, 2012 rejecting the bail application filed under Section 12 of the said Juvenile Justice(Care and Protection) Act on behalf of the Child in Conflict with Law (hereinafter referred to as CCL) Shri. Emphi Suchiang.

3. The brief facts of the case is that on 27.08.2020 an intimation report was received by the Jowai Police from Dr. D. Nongpluh of Dr. Norman

Tunnel Hospital, Jowai stating to the effect that on examination of the alleged victim (said to be 16 years of age), she discovered that the said victim was pregnant and on enquiry, it was told that she had a physical relationship with one Saving Suchiang @ Emphi Suchiang the CCL above named. Accordingly, the said Khliehriat P.S. Case No. 34(9) 2020 was registered and the matter was forwarded to the learned Special Judge, POCSO Court, Khliehriat.

4. The learned Special Judge (POCSO) on examination of the CCL and on perusal of the birth certificate came to a finding that he is a minor of about 17 years of age and accordingly, vide order dated 14.09.2020 transferred the case to the Juvenile Justice Board, Khliehriat who directed that the CCL be kept at the Observation Home (Boys), Shillong.

5. The mother of the CCL then preferred a bail application under Section 12 of the Juvenile Justice (Care and Protection) Act, 2015 which was moved before the said learned Principal Magistrate, JJB, Khliehriat on 28.09.2020. However, vide order dated 28.09.2020, the learned Principal Magistrate rejected the said bail application mainly on the ground that at that juncture, the statement of the survivor is yet to be recorded under Section 164 Cr.P.C.

6. Being highly aggrieved with the said impugned order, the petitioner who is the uncle of the CCL has preferred this instant revision petition assailing the same, inter alia on the ground that the learned Principal Magistrate, JJB has made a serious error in passing the said impugned order without taking into account the provision of Section 12(1) of the Juvenile Justice (Care and Protection) Act, 2015.

7. Another ground raised by the petitioner is that the learned Principal Magistrate, JJB has refused bail on the ground that the statement of the survivor is yet to be recorded under Section 164 Cr.P.C which runs contrary to what is provided under Section 12(1) of the JJ Act 2015, where it was provided bail can be denied to a juvenile only on the ground that (a) the

release of such juvenile is likely to bring him into association with any known criminal and (b) that if released he may be exposed to moral, physical or psychological danger or (c) that his release would defeat the ends of justice.

8. Again another ground pointed out by the petitioner is that the learned Principal Magistrate without considering the fact that the alleged survivor has admitted to having a relationship with the CCL herein and as such, the act attracting the offence alleged was entered into mutually, therefore, there is no question of apprehension of any danger or harm either to the alleged survivor or the CCL, has passed the impugned order without any application of mind.

9. The fact that the mother of the CCL who had preferred the bail application before the learned Principal Magistrate, JJB had undertaken that she will take full responsibility and shall ensure that the CCL undergo proper counselling has also not been appreciated by the learned Principal Magistrate, JJB while passing the impugned order, it was further submitted.

10. Mr. T.L. Jyrwa, learned counsel for the petitioner in his submission has given a brief detail of the facts and circumstances of the case which have been enumerated above and as such, repetition of the same is not required. However, Mr. Jyrwa has submitted that the learned Principal Magistrate, JJB, Khliehriat while taking up the bail matter for hearing has, in the impugned order failed to record the submissions advanced by both parties and has rejected the prayer for bail only on the ground that the statement under Section 164 Cr.P.C of the survivor is yet to be recorded.

11. The learned counsel for the petitioner has further submitted that the learned Principal Magistrate, JJB has made a serious error in law by failing to consider the fact that a child in conflict with law have got a statutory right for bail under Section 12 (1) of the Juvenile Justice (Care and Protection of Children) Act 2015. Even if the learned Principal Magistrate choose to apply the proviso clause to Section 12(1) as pointed above, considering the fact

that the case of the CCL is that he has a consensual relationship with the alleged survivor, the said proviso would not be applicable in the instant case, which fact was disregarded by the learned Principal Magistrate.

12. It is also the submission of the learned counsel that in the said bail application preferred before the learned Principal Magistrate, the mother of the CCL has specifically averred that she will take full responsibility of the child and proper counselling will be given if released on bail, however this averment was not taken note of by the learned Principal Magistrate.

13. In support of his contention and submission, the learned counsel has given a list of citations being copies of judgment of the Hon'ble Supreme Court and High Courts which are considered relevant in the context of this case. The list is as follows:

1. ***Lal Kamlendra Pratip Singh v. State of U.P and Ors: (2009) 4 SCC 437.***
2. ***In re Contagion of Covid 19 Virus in Children Protection Homes: 2020 SCC Online SC 354.***
3. ***Re Exploitation of Children in Orphanages in the State of Tamil Nadu v. Union of India and Ors: 202 SCC Online 576.***
4. ***Vinay Tiwari v. State of UP: Criminal Revision No. 3125 of 2018.***
5. ***G. v. NCT of Delhi and Ors: Crl. MC 1474 of 2020.***
6. ***Tejram Nagrachi v. State of Chhattisgarh: MCRC No. 8532 of 2016.***

14. It is finally prayed that this revision petition may be allowed and necessary orders and direction may be issued as far as the impugned order is concerned and further, that the interim bail passed by this Court in this matter may be made absolute.

15. The State respondent No. 1 & 2 represented by the learned Advocate General, Mr. A. Kumar assisted by Ms. Z.E. Nongkynrih, learned

GA has also generally concurred with the submission of the learned counsel for the petitioner to the extent that the statutory provision of Section 12 of the JJ Act, 2015 has to be complied with in letter and spirit. However, the learned AG has also submitted that considering the serious nature of the offence as well as the release of the petitioner not being in the interest of justice, since statement under Section164 Cr.P.C of the survivor has not yet been recorded, as such, the impugned order was passed in compliance with the standards prescribed by the JJ Act.

16. The learned AG has also submitted that where the CCL seeks bail, notice ought to be issued to the Complainant and this obligation does not have any exception, the same not having been complied with as is apparent from the impugned order.

17. It is finally submitted that in view of the legal position, the learned Principal Magistrate, JJB ought to have passed the order in terms of requirement of Section 12 of the JJ Act and in this regard, this Court may issue necessary guidelines herein to be followed by the subordinate courts competent to try cases of this nature.

18. To support his argument, the learned AG has relied on a number of cases most of which has also been cited by the petitioner, being;

1. ***Sukhwant Singh and Ors. v. State of Punjab: (2009) 7 SCC 559.***
2. ***Lal Kamlendra Pratip Singh v. State of U.P and Ors: (2009) 4 SCC 437.***
3. ***In re Contagion of Covid 19 Virus in Children Protection Homes" 2020 SCC Online SC 354.***
4. ***Re Exploitation of Children in Orphanages in the State of Tamil Nadu v. Union of India and Ors: 202 SCC Online 576.***
5. ***Vinay Tiwari v. State of UP" Criminal Revision No. 3125 of 2018.***

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7. ***Tejram Nagrachi v. State of Chhattisgarh: MCRC No. 8532 of 2016.***

19. Mr. S.A. Sheikh, learned counsel for the respondent No. 3/Complainant has submitted that he is not advancing any argument, but is endorsing the argument of the State respondent.

20. Having heard the parties and on perusal of the authorities submitted before this Court, what can be seen is that the provision of section 12 of the Juvenile Justice Act, 2015 has to be understood in the context of the Statement of Objects of the same. In the introductory part of the said Act of 2015, it has been noted that:

> *"... The Juvenile Justice (Care and Protection of Children) Act, 2015 ensures proper care, protection, development, treatment and social re-integration of children in difficult circumstances by adopting a child-friendly approach, keeping in view the best interest of the child..."*

21. In the Statement of Objects and Reasons, at paragraph 1 and 2 of the said JJ Act, it is again noted as follows:

> *"Article 15 of the Constitution, inter alia, confers upon the State powers to make special provision for children. Articles 39 (e) and (f), 45 and 47 further makes the State responsible for ensuring that all needs of children are met and their basic human rights are protected.*
>
> *2. The United Nations Convention on the Rights of Children, ratified by India on 11th December, 1992, requires the State Parties to undertake all appropriate measures in case of a child alleged as, or accused of, violating any penal law, including (a) treatment of the child in a manner consistent with the promotion of the child's sense of dignity and worth (b) reinforcing the child's respect for the human rights and fundamental freedoms of others (c) taking into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society."*

22. Reading the above while considering the various provisions under

the JJ Act, one can safely come to the conclusion that in dealing with a CCL, the courts or for that matter, the Juvenile Justice Board (JJB) is called upon to be highly sensitive keeping the welfare of the child in uppermost concern. Again, the JJB when called upon to apply the provision of Section 12 of the said JJ Act, regard has to be had to the welfare of the child (Juvenile) inasmuch as, confining such child in custody in whatever form would not be beneficial to the overall development of the child's personality.

23. At this juncture, it would be worthwhile to have a look at the provision of Section 12 of the JJ Act, 2015 which reads as follows:

> "*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 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."*

24. On consideration of the authorities cited by the parties herein, as far

as reference to Section 12 of the JJ Act is concerned, it is noticed that there is a common strain and a similar and almost identical observation and finding, inasmuch as, there is no difference of opinion that, on application for bail by CCL under Section 12 of the JJ Act, unless the Board is absolutely sure that releasing of the CCL would endanger the life and person of the CCL to the extent that he may come into association with any known criminal or that he may be exposed to moral, physical or psychological danger and further that his release would defeat the ends of justice, bail has to be statutorily granted with or without surety

25. However, in Suo Moto Writ Petition(Civil) No 4 of 2020 in the matter of ***"In Re Contagion of Covid 19 Virus in Children Protection Homes"***, the Hon'ble Supreme Court vide order dated 03.04.2020, had issued a slew of directions in respect of measures to be taken by the stakeholders as regard the welfare and safety of juveniles. One of such direction issued to the Juvenile Justice Board is that children alleged to be in conflict with law, residing in Observation Homes, JJB shall consider taking steps to release all children on bail, unless there are clear and valid reasons for the application of the proviso to Section 12, JJ Act 2015, which should have been complied with by the learned Principal Magistrate.

26. It is also worth mentioning that in the case of ***Lalu Kumar and Ors. v. State of Bihar*** MANU/BH/1865/2019 the High Court of Patna at paragraph 84 to 86 of the same has held as under:

> ***"84****. While interpreting Section 12, the Board is duty bound to be guided by the fundamental principles enumerated in Section 3 of the Act of 2015, specially the principles of 'best interest', 'repatriation' and 'restoration' of child. The fundamental principles in Section 3(xii) provides that a child shall be placed in institutional care as a step of last resort after making a reasonable inquiry. The gravity and nature of the offence are immaterial for consideration of bail under the Act of 2015. As per Section 12 of the Act of 2015, an application for bail is not decided by reference to classification of offences, as bailable or non-bailable under the CrPC. All persons alleged to be in conflict with law and apparently a child when apprehended*

must be released except in the following three circumstances when there is reasonable ground for believing that:-
(i) The release is likely to bring that person into association with any known criminal;
(ii) The release is likely to expose the said person to moral or psychological danger; and
(iii) The release would defeat the ends of justice.

***85**. In all cases, the Board is required to record its reason, if it refuses to release the child on bail and the circumstances that laid to such a decision. Taking surety is not essential for ordering release of the child on bail. The child may be released without surety also. The child may be placed under the supervision of a 'probation officer' or under the care of any 'ft person' after release on bail. It further provides that in case the court has directed release of the child on bail after fulfilling certain conditions, but the child is unable to fulfill those conditions in the next seven days, the Board shall modify those conditions.*

***86**. The Board is vested with the power to grant bail to any person, who has not completed the age of 18 years irrespective of the nature of offence being 'bailable' or 'non-bailable' or specified in any of three categories of the Act, as 'petty offences', 'serious offences' and 'heinous offences'."*

27. Now coming to the impugned order, what is seen is that the learned Principal Magistrate has refused bail to the CCL only on the ground that the statement under Section 164 Cr.P.C of the survivor has not been recorded. There is no observation or finding as regard the three conditions laid down in the proviso of Section 12 (1) of the JJ Act, 2015 which will restrain the CCL as far as his custody is concerned. This being the case, the learned Principal Magistrate has not applied any judicial discretion and has violated the statutory provision present in the said Section 12(1).

28. In view of the above, the impugned order cannot stand the scrutiny of law and is accordingly set aside.

29. The interim bail granted to the CCL is hereby made absolute and the learned Principal Magistrate, JJB, Khliehriat is hereby directed to issue necessary orders on being presented by the CCL who shall be released on bail on the following conditions: -

(i) That he shall provide personal surety of ₹ 10,000/- (Rupees ten thousand) with one solvent surety of the like amount.

(ii) That he shall be under the custody and care of his mother who shall ensure that counselling is given to him in this connection.

30. Before parting with this case, this Court deems it fit and proper to call upon all the Juvenile Justice Boards in the State to strictly adhere to the statutory provision of Section 12 of the JJ Act, 2015 while considering the issue of grant or refusal of bail for a CCL and to approach any case where a juvenile is involved with care and sensitivity.

31. Let copy of this order be issued upon all concerned.

32. With the above, this matter is disposed of. No cost.

Judge

Meghalaya
12.11.2020
"N. Swer, Stenographer"