

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Criminal Appeal No. 222 of 2020

Ritik S/o Sanjay Thakre Vs. State of Maharashtra Through Police Station,
P.S. Gangazari Dist. Gondia

Office Notes, Office Memoranda of Coram,
orders
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's

Mr. R.M. Daga, Advocate with Mr. N.R. Tekade, Advocate for the
appellant
Mr. Amit Chutke, APP for the respondent - State

CORAM : MANISH PITALE, J.

DATED : JULY 12, 2021

Hearing was conducted through video conferencing and the learned counsel agreed that the audio and visual quality was proper.

2. Heard learned counsel for the appellant as well as the learned A.P.P. for the respondent – State.

3. In this appeal, it is pointed out that the appellant has been apprehended and he has been staying in a special home for the past about 2 years and 8 months. This is on the basis that at the time when the alleged offence was committed, the appellant was a minor. The appellant along with other accused persons is facing prosecution in pursuance of an FIR dated 17/11/2018, registered

at Gangazari Police Station Dist. Gondia for offences under Sections 341, 342, 354-A, 354-B, 376-D, 385, 397, 504 and 506 of the Indian Penal Code and Sections 66(E), 67(A) and 67-B of the Information Technology Act, 2000.

4. Record shows that on an earlier occasion, an application for bail filed on behalf of the appellant was dismissed by this Court by order dated 22/07/2019 and a direction was given that the Trial Court shall expedite the proceedings, in view of the fact that the prosecution intended to examine only 18 witnesses.

5. Mr. R.M. Daga, the learned counsel appearing for the appellant submits on instructions that even as on today the charge is yet to be framed, thereby indicating that proceedings before the Trial Court will take long time for completion. The learned counsel appearing for the appellant has invited attention of this Court to Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015. It is submitted that a proper appreciation of the aforesaid provision would show that a person like the appellant herein would be entitled to grant of bail, notwithstanding anything contained in the Criminal Procedure Code and that only in exceptional circumstances could bail be denied. It is emphasized that even as on today, the appellant has remained in the special home for

about 2 years and 8 months, while Section 18(g) enjoins that orders that may be passed regarding child found to be in conflict with law under the said provision may direct that the child be sent to special home for a period not exceeding three years. On this basis, it was submitted that the present appeal deserved to be allowed, because the Court below in the impugned order dated 24/08/2020, has not considered the mandate of Section 12 of the aforesaid Act and instead has placed emphasis only on the alleged seriousness of the allegations made against the appellant.

6. Mr. Amit Chutke, learned A.P.P. submitted that there can be no dispute about the fact that under Section 12 of the aforesaid Act, the Court could refuse bail only in exceptional circumstances. It was not disputed that the appellant has been sent to a special home.

7. Having heard the learned counsel for the parties, this Court is of the opinion that under Section 12 of the aforesaid Act, the Court needs to take a particular course of action when the accused is a “child” within the meaning of the said word assigned under Section 2(12) of the said Act. The relevant portion of Section 12 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."

7. A perusal of the above provision clearly indicates that it is only in exceptional circumstances that bail could be refused to a child alleged to be in conflict with law. These circumstances include possibility of the concerned person being associated with any known criminal or he being exposed to moral, physical or psychological danger or that release of such person would defeat the ends of justice.

8. Perusal of the impugned order shows that the Court below has not referred to any circumstances while rejecting the application filed on behalf of the appellant. Only seriousness of allegations levelled against the appellant has been taken into consideration.

9. Sub Section (1) of Section 12 makes it clear that when it is alleged that a child has committed an offence, notwithstanding anything contained in the Criminal Procedure Code, such a person shall be released on bail with or without surety on placing him under the supervision of probation officer or under care of any fit person. It is not seriously disputed that the appellant has now spent about 2 years and 8 months in the special home, upon being apprehended.

10. Considering the mandate of the aforesaid provision of law, this Court is inclined to allow the Appeal.

11. Accordingly, the Appeal is allowed. The impugned order passed by the Sessions Court at Gondia is set aside. The appellant is directed to be released on bail, subject to the condition that he shall attend proceedings before the trial Court on each and every date. He shall not enter jurisdiction of Police Station Gangazari District Gondia and he shall also not enter village Karanja, Tahsil and

District Gondia, where the victim is said to be residing. The appellant shall not in any manner himself or through any other person influence the witnesses or tamper with the evidence.

12. The Trial Court is directed to expedite the proceedings.

13. The Appeal stands disposed of.

JUDGE

MP Deshpande