

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLREV No. 96 of 2021

An application under Section 102 of the Juvenile Justice (Care and Protection of Children) Act, 2015.

Tanoj Kumar Naik @ Sahil ***Petitioner***

Versus

State of Orissa & Another ***Opp. Parties***

Advocates appeared in this case through Hybrid Mode :

For Petitioner : Mr. Debabrata Dash, Advocate

For Opp. Party : Mr. Sibani Shankar Pradhan,
Addl. Govt. Advocate

CORAM:
JUSTICE SAVITRI RATHO

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Date of Judgment : 27.01.2022
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Savitri Ratho, J. 1. Heard Mr. Debabrata Dash, learned counsel for the petitioner-Child in Conflict with Law (in short “CCL”) and Mr. Sibani Shankar Pradhan, learned Addl. Govt. Advocate for the State.

2. Notice had been issued to the informant-Opp. Party No.2 through the I.I.C. as well as through the Registered Post with A.D.

None appears for Opp. Party No.2 when the matter is called.

3. This is an application under Section 102 of the Juvenile Justice (Care and Protection of Children) Act, 2015, (in short the “JJ Act”) for grant of bail to the CCL in connection with J.C.T. Case No.281/62 of 2020 corresponding to Koksara P.S. Case No.197 of 2020 in the Court of the Registrar -cum- Principal Magistrate, Juvenile Justice Board, Kalahandi, Bhawanipatna registered for commission of offences punishable under Sections 147/451/294/506/305/34 of the I.P.C. read with Section 12 of the POCSO Act.

4. The prayer for bail of the CCL was rejected by the Registrar -cum- Principal Magistrate, Juvenile Justice Board, Kalahandi, Bhawanipatna by order dated 10.08.2020 and thereafter by the learned Addl. Sessions Judge -cum- Special Judge, Children Court, Bhawanipatna in Criminal Appeal No. 02 of 2020 by order dated 27.11.2020.

5. The allegations against the CCL as per the FIR is that on 31.07.2020 at about 8.30 p.m. the CCL has abused the son of the informant over phone and threatened to kill him. On 01.08.2020,

at about 11.30 p.m., the CCL along with other accused persons forcibly opened the door of the house of the informant and abused his son in obscene language and told him that his sister is his lover and he will commit rape of her in their presence and then left the spot. On account of this behaviour of the CCL, the daughter of the informant committed suicide the next day by hanging herself from a tree by means of a Odhani.

6. Mr. Dash, learned counsel for the CCL states that the CCL was aged about 16 years at the time of occurrence and is in the observation home since 10.08.2020. He further submits that charge sheet has been submitted for the offences punishable under Sections 147/451/294/506/305/34 of the I.P.C. read with Section 12 of the POCSO Act and the cause of death of the deceased has been opined to be asphyxia caused by suicidal hanging. He further submits that the social investigation report of the petitioner is favourable and in view of the mandate of Section 12 of the Juvenile Justice (Care and Protection of Children) Act and the decisions of this Court and the Hon'ble Supreme Court and the absence of cogent material on record to show that the release of the petitioner is likely to bring him into association with any known criminal or expose him to moral, physical or psychological danger or that his

release would defeat the ends of justice, he may be released on bail.

7. Mr. Pradhan, learned Addl. Govt. Advocate has produced the post mortem examination report along with social investigation report of the CCL and opposes the prayer for bail submitting that the CCL is responsible for the death of the deceased and does not deserve to be released on bail and he will be exposed to the other accused persons who had accompanied him to the house of the informant which will be detrimental to his interest.

8. I have gone through the case diary, social investigation report and statement of the father and brother of the deceased. Her elder brother has stated that the CCL was harassing the deceased who was student of +2 and declaring his one sided love for her and sending her obscene whats app messages. As she was not interested, on 31.07.2020, he had protested against the activities of the CCL and forbidden him to repeat his activities. On 01.08.2020 the CCL alongwith his uncle and others came to the house of deceased and threatened her family members and threatened to rape the deceased in front of them and tried to drag the deceased outside. The social investigation report reveals that the father of the CCL died about six years back and his mother is not staying with

his paternal family. The CCL is in the custody of his paternal grandmother (aunt of his late father).

9. Considering the submissions of the learned counsels, the nature of accusations against the CCL, the mandate of Section 12 of the Juvenile Justice (Care and Protection of Children) Act 2015, and the decisions of this Court and the Apex Court, the social investigation report, period of his detention in custody, and the fact that his grandfather is not an accused in the case, I am inclined to allow this Criminal Revision and set aside the impugned orders and direct for release of the CCL represented by his grandfather Manibhadra Naik, on bail to the satisfaction of the learned P.M.J.J.B., Kalahandi at Bhawanipatna in J.C.T. Case No.281/62 of 2020 corresponding to Koksara P.S. Case No.197 of 2020 on such terms and conditions as deemed just and proper including the following conditions:-

I. The grandfather-guardian of CCL shall furnish an undertaking that after his release:

- (i) The CCL will not be allowed to come in contact with any criminals including the co accused in this case.
- (ii) The CCL will not indulge in any criminal activity.
- (iii) He will ensure that the CCL resumes his studies or learns some activity / vocation which will enable him to earn his living.

II. The concerned Probation Officer / Child Welfare Officer Kalahandi shall maintain general supervision over the CCL by visiting his house at least once a month, to ensure that he has resumed his studies or is learning a vocation and is not being allowed to come in contact with any criminals.

10. The CRLREV is accordingly disposed of.

11. In view of the restrictions due to resurgence of COVID-19 situation, learned counsel for the parties may utilize a printout of the order available in the High Court's website, at par with certified copy, subject to attestation by the concerned advocate, in the manner prescribed vide Court's Notice No.4587, dated 25th March, 2020, modified by Notice No.4798 dated 15th April, 2021, and Court's Office Order circulated vide Memo Nos.514 and 515 dated 7th January, 2022.

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(Savitri Ratho)
Judge

Orissa High Court, Cuttack
Dated 27th January 2022/ Sukanta