

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLREV No. 395 of 2021

Jayanta Tanty @ Kunal

Petitioner
Mr. S.R. Das, Advocate

-versus-

State of Orissa & Anr.

Opposite Parties
Mr. P.C. Das, ASC
Mr. Siddhartha Samal, Advocate
(For O.P. No.2)

CORAM:
JUSTICE SAVITRI RATHO

Order No.

ORDER
04.02.2022

05. 1. I have heard Mr. Mr. S.R. Das, learned counsel for the petitioner, Mr. P.C. Das, learned Additional Standing Counsel and Mr. Siddhartha Samal, learned counsel for the Opposite Party No.2 through hybrid mode .
2. This is an application under Section 104 of the Cr.P.C. read with Section 102 of the Juvenile Justice (Care and Protection of Children) Act (in short “the JJ Act”) for grant of bail to the CCL-Jayanta Tanty @ Kunal in connection with Bandamunda P.S. Case No.137 of 2020 corresponding to Special G.R. Case No. 134 of 2020 in the Court of learned Principal Magistrate, J.J.B., Rourkela. Chargesheet has been submitted against the petitioner for commission of offences punishable under Sections 376(AB) of IPC read with Section 6 of POCSO Act.
3. The prayer for bail of the CCL was rejected by the learned Principal Magistrate, J.J.B., Rourkela on 23.12.2020 and thereafter by the learned Addl. District Judge-cum-Children Court, Sundargarh in Criminal Appeal No.01 of 2021 on 25.03.2021. The said orders have been challenged in this Criminal Revision.

4. The prosecution allegations in brief are that on 13.09.2020 in between 11.00 A.M. to 12.00 Noon, while the daughter of informant (victim girl) was playing near his house, at that time the CCL offered her chocolate and took the victim girl into his new house and forcefully pushed his penis into her vagina causing pain and left her after threatening her not to tell anybody. As the victim girl experienced pain, she told her mother about the incident a few days later. The matter was then reported to the police.

5. Mr. S.R. Das, learned counsel for the petitioner states that the CICL was aged about 14 years at the time of occurrence and it is a case of attempt only. He further submits that the CCL is in the observation home since more than one year and the social investigation report is favourable and in view of his age and in view of the mandate of Sec 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015, he should be released on bail.

6. Mr. Siddhartha Samal, learned counsel for the Opposite Party No.2 vehemently opposes the prayer for bail stating that the age of the victim was only 6 years at the time of incident and the incident has caused physical pain and has affected her psychologically and release of the CCL will be detrimental to her mental well being.

7. Mr. P.C. Das, learned Additional Standing Counsel submits that the social investigation report is not available in the case diary. He further submits that the statement of the victim rendered under Section 164 Cr.P.C. implicates the CCL and her medical examination report corroborates the allegation.

8. Section 12 and 18 of *the JJ Act* are relevant for considering the prayer for bail of a child aged less than 16 years. The said provisions are extracted below :

“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 available 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.”

“18. Orders regarding child found to be in conflict with law.—(1) Where a Board is satisfied on inquiry that a child irrespective of age has committed a petty offence, or a serious offence, or a child below the age of sixteen

years has committed a heinous offence, then, notwithstanding anything contrary contained in any other law for the time being in force, and based on the nature of offence, specific need for supervision or intervention, circumstances as brought out in the social investigation report and past conduct of the child, the Board may, if it so thinks fit,— (a) allow the child to go home after advice or admonition by following appropriate inquiry and counselling to such child and to his parents or the guardian; (b) direct the child to participate in group counselling and similar activities; (c) order the child to perform community service under the supervision of an organisation or institution, or a specified person, persons or group of persons identified by the Board; (d) order the child or parents or the guardian of the child to pay fine: Provided that, in case the child is working, it may be ensured that the provisions of any labour law for the time being in force are not violated; (e) direct the child to be released on probation of good conduct and placed under the care of any parent, guardian or fit person, on such parent, guardian or fit person executing a bond, with or without surety, as the Board may require, for the good behaviour and child's well-being for any period not exceeding three years; (f) direct the child to be released on probation of good conduct and placed under the care and supervision of any fit facility for ensuring the good behaviour and child's well-being for any period not exceeding three years; (g) direct the child to be sent to a special home, for such period, not exceeding three years, as it thinks fit, for providing reformatory services including education, skill development, counselling, behaviour modification therapy, and psychiatric support during the period of stay in the special home: 18 Provided that if the conduct and behaviour of the

child has been such that, it would not be in the child's interest, or in the interest of other children housed in a special home, the Board may send such child to the place of safety. (2) If an order is passed under clauses (a) to (g) of sub-section (1), the Board may, in addition pass orders to— (i) attend school; or (ii) attend a vocational training centre; or (iii) attend a therapeutic centre; or (iv) prohibit the child from visiting, frequenting or appearing at a specified place; or (v) undergo a de-addiction programme. (3) Where the Board after preliminary assessment under section 15 pass an order that there is a need for trial of the said child as an adult, then the Board may order transfer of the trial of the case to the Children's Court having jurisdiction to try such offences.”

9. From a perusal of these provisions, it is clear that a delinquent juvenile aged below 16 years ordinarily has to be released on bail irrespective of nature of offence alleged to have been committed by him unless it is shown that if he is released on bail there are reasonable grounds to believe that the release of the CICL 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. The nature of offence and the merits of the case do not have any relevance but can be considered to some extent if they are of such a nature as would defeat the ends of justice. But such materials have to be produced by the prosecution to make out any of the grounds provided in the Section 12(1) of the JJ Act of 2015, in order which may persuade the Court not to release the juvenile on bail.

10. I have gone through the impugned rejections orders of the learned Courts below as well as the statement of the victim girl recorded under Section 164 Cr.P.C., her medical examination report and the social investigation report filed by the learned Addl. Standing Counsel.

11. The victim has squarely implicated the CICL in commission of the heinous crime in her statement recorded under Section – 164 of the Cr.P.C where she has described the manner of commission of the offence. . The medical examination reveals a tear in her hymen .

The social investigation report mentions that lack of moral values , lack of parental control , peer group influence and social maladjustment are the causative factors of the offence .

The finding of learned PM Addl JJB , Rourkela that release of the CCL would defeat the ends of justice as well as the mandate and objective of the JJ Act and may cause irreparable social humiliation to the minor victim girls and her parents cannot be found fault with. The observation of the learned Addl. District Judge-cum-Children Court, Sundargarh that it is case of attempt only is however not acceptable in view of the statement of the victim girl , the provision of Section 375(a) of the IPC which provides that “ *A man is said to commit “rape” if he— (a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person*” and detection of a tear in the hymen of the victim girl

12. I am conscious of the mandate of Sections 12 and 18 of the JJ Act, but considering the nature of allegations against the CICL, age of the victim girl, the social investigation report and the fact that the CICL are neighbours, I am of the considered view that the release of the CICL on bail at this stage would not be in his interest as his release would defeat the ends of justice. His continued stay in the observation home for some more time, away from the influence of his friends would go a long way in reforming him. I am therefore not inclined to release the petitioner on bail at this stage. The prayer for bail is accordingly rejected.

13. The CRLREV stands dismissed.

14. As the CCL is stated to be in custody since more than one year, the learned trial court is directed to expedite the enquiry. Copy of this order be sent to the learned PM Addl JJB for compliance.

15. 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.

(Savitri Ratho)
Judge

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