

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

CRIMINAL APPEAL NO. 523/2022

Jagsai @ Jai Namdev Surpam

Vs.

The State of Maharashtra, through P.S.O. P.S. Wani, District Yavatmal

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

Court's or Judge's orders

Shri V.A. Dahiwalé, Advocate for appellant
Shri A.M. Kadukar, APP for respondent/State

CORAM : SMT. M.S. JAWALKAR, J.
DATED : 28/09/2022

Heard.

2. The present appeal is filed under Section 101(5) of the Juvenile Justice (Care and Protection of Child) Act, 2015 read with Provision of Criminal Procedure Code. The present appeal is filed being aggrieved by the impugned order dated 05/05/2022 passed by the learned Special Judge, Children's Court, Additional Sessions Judge-2, Kelapur, Pandharkawada, District Yavatmal under Juvenile Justice Act in Session Case No.11/2022. The application for grant of bail came to be rejected by learned Special Judge and he was directed to be kept in observation home until the conclusion of trial.

3. The prosecution story is that Sau. Seema Mohan Gadge on 16/09/2021 lodged a complaint alleging that one Chandrashekhar Durge along with his accomplices have murdered her brother Nilesh

Choudhary as the deceased was a thorn in extra marital affair of sister-in-law of complainant i.e. wife of deceased and said Chandrashekhar Durge.

4. It is alleged that deceased left his house on 27/08/2021 at about 5.00 pm and did not return hence missing complaint was filed vide case No.60/2021 on 29/08/2021. The complainant's husband informed that a motorbike of Niesh is standing near Fulora Shivar. When she went along with villagers, his body came to be found under bushes with a nylon rope tied around his neck.

5. During investigation, the main accused Chandrashekhar Durge came to be arrested and on the basis of his confessional statement, four other accused came to be arrested in which, present appellant was also taken into custody and presented before the Juvenile Board.

6. Learned Counsel for appellant submitted that charge-sheet is filed 09/12/2021 and Sessions Case No.11/2022 came to be registered against the present appellant.

7. On perusal of charge-sheet, role attributed to present appellant in the alleged crime is that appellant had ordered a Sleep Spray namely CF Carbamide Forte. It was used by accused to make the deceased unconscious. Another role attributed to the present appellant is that he tightened the rope round the deceased's neck along with other accused and he

along with accused Yogesh had thrown the mobile phone belonging to deceased in the river with the help of co-accused. Both these roles attributed to the present appellant are based on alleged confessional statement of main accused.

8. The learned Counsel for appellant relied on judgment in case of *Kishan Kumar Vs. State of Haryana in CRR 725/2019*, dated 08/01/2020, and in case of *Karan Vs. State through Ratkal Police Station, Kalaburagi District 2017 DGLS (Kar.) 104*, in support of his contention that, if the juvenile is not released on bail only on the ground that, he may be exposed to moral and psychological danger and his release would defeat the ends of justice, there has to be finding recorded as to how he will come in the contact with criminals and how he will be exposed to moral, physical or psychological danger, which would defeat the ends of justice. There is no such finding recorded by the learned Additional Sessions Judge-2 Kelapur, Pandharkawada, District Yavatmal.

9. Learned APP sought time and after going through the charge-sheet opposed the application.

10. I have perused the documents placed on record and the charge-sheet. The learned Sessions Court mainly rejected the application on the ground that in the case of seriousness the offences like Section 302 of the Indian Penal Code the concession of bail to juvenile in conflict with law may not be given.

11. It is further observed that the juvenile in conflict with law took active part from the initial stage. As per the plan, he online ordered a spray for bringing a human in unconscious state. While using this mobile, online order for spray was given. It is therefore observed that to accomplish the plan, the juvenile in conflict with law took active part in committing the murder of Nilesh. The articles which were used in committing the crime were destroyed. The learned Judge also relined on opinion of Juvenile Justice Board that offence of juvenile in conflict with law, is heinous and opined to hold a trial against him as an adult. It is observed that there is endanger to the life and property of a person if the concession of bail is given to the juvenile in conflict with law.

12. While rejecting this application, learned Additional Sessions Judge-2, Kelapur failed to appreciate this fact that the only role which can be prima facie derived from the charge-sheet is that his mobile is used to order the said spray. So far as other role alleged to have been played by this Juvenile is only on the basis of confessional statement recorded of other accused. The said confessional statement is yet to be established and said statement cannot be used against the co-accused.

13. As held in ***Kishan Kumar*** (supra) held as under:

“In the present case, while declining the bail application, the relevant provision

has not been considered by both the Courts below as in accordance with Section 12 of the Act, the juvenile is entitled to bail as a matter of right unless the case falls in the exceptions carved out in the provision itself but nothing was available on record to show that any of the three exceptions specified under Section 12(1) of the Act was existing.”

14. There is no material available on record to show that there are reasonable grounds to presume that the appellant is likely to commit such offence related to property and person or there is likelihood to come into the contact of any criminal if released on bail or exposing him to moral, physical or psychological danger. There are no criminal antecedent in respect of juvenile. As such the order passed by the learned Special Judge, Children’s Court, Additional Sessions Judge-2, Kelapur, Pandharkawda, District Yavatmal is patently erroneous and contrary to the spirit of the Juvenile Justice (Care and Protection of Children) Act, 2015.

Hence I proceed to pass the following order:

ORDER

- i) The appeal is allowed.
- ii) The impugned order dated 05/05/2022 passed by the learned Special Judge, Children’s Court, Additional Session Judge-2, Kelapur, Pandharkawda, District Yavatmal is hereby quashed and set aside.

iii) The appellant- Jagsai @ Jai Namdeo Surpam shall be released on bail by executing the bond by his guardian in the sum of Rs.1,00,000/- (Rupees One Lakh only) with two solvent sureties to the satisfaction of learned Special Judge, Children's Court, Additional Session Judge-2, Kelapur, Pandharkawda, District Yavatmal.

iv) The guardian to see that appellant will remain available before the concerned Board regularly on all dates and hearings. He shall not remove himself out of the jurisdiction of the concerned Court without proper direction of the Court.

The observation made in the above application are prima facie, Board shall proceed without being influenced by any observation made in the order.

JUDGE

R.S. Sahare