

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 110 OF 2023

X.Y.Z. ...Appellant

Versus

The State of Maharashtra ...Respondent

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Mr. S. G. Ladda, Advocate for the Appellant.

Mr. S. P. Sonpawale, APP, for the Respondent – State.

Mr. V. D. Bhise, Advocate for Assist to P.P.

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CORAM : R.M. JOSHI, J

DATE : JUNE 13, 2023

PER COURT :

1. At the outset, learned Counsel for the Appellant is directed to amend the Appeal forthwith by masking the name of the Appellant, as disclosure of the name of juvenile in conflict with law (for short 'JCL') is contrary to Section 74 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short 'J.J. Act') and judgment of Hon'ble Apex Court in case of Shilpa Mittal Vs. State of NCT, New Delhi, (2020) 2 SCC 787. The Registry is also directed to mask the name of JCL from all records.

2. This Appeal is preferred under Rule 101(5) of J.J. Act taking exception to the order dated 04th October, 2022 passed below Exh. 7 rejection Application for bail in Sessions Case No. 18 of 2022.

3. The facts which led to the filing of the present Appeal can be narrated, in brief, as under:

Appellant is a JCL. It is the case of the prosecution that he committed murder of his sister, who had married to the informant against wishes of family and that this is the case of honor killing. It is alleged that Appellant chopped off the head of deceased with sickle on 05.12.2021. Offence came to be registered against him. He arrested on the same day. It was pointed out to the learned J.M.F.C that Appellant is juvenile, and therefore, he was produced before Juvenile Justice Board (for short 'JJB'). An inquiry was conducted by the JJB and considering the nature of offence, Appellant was ordered to be produced and tried as an adult before the Sessions Court. Charge-sheet came to be filed on 28th January, 2022. Appellant moved an application Exh. 7 for grant of bail, which came to be rejected by passing impugned order.

4. Present Appeal is filed with the contention that the Appellant is innocent and was juvenile at the time of occurrence of the alleged incident and in view of Section 12 of the J.J. Act, he is entitled to be released on bail.

5. Learned Counsel for the Appellant submitted that the trial Court has committed serious error in rejecting application for bail without recording reasons for the same. He drew attention of the Court to the impugned order in order to point out that though there is observation in the order to the effect that "there appears reasonable ground for believing that release of JCL is likely to bring him into association with any known criminal or expose him to moral, physical or psychological danger or his release would defeat ends of justice" but except mere reproduction of the wording from Section 12 of J.J. Act, no reasons are recorded in order to draw such finding. He further submits that order in question is passed without calling report of Probation Officer and without ascertaining psychological state of JCL and that order has been passed mechanically. He placed reliance on the

following orders/judgments: Shubham @ Bablu Milind Suryavanshi Vs. The State of Maharashtra, B.A. No. 2282/2021, Prasad Shubhash Khade Vs. State of Maharashtra, B.A. No. 1647/2020, Sandeep Ayodhya Prasad Rajak Vs. State of Maharashtra, 2022 SCC OnLine Bom 1825, & CCL 'A' Vs. State (NCT of Delhi), MANU/DE/1914/2020.

6. Learned APP opposed the said submissions by stating that the Appellant is alleged to have committed serious crime and that having regard to the nature of offence, application of bail is rightly rejected by trial Court.

7. There is no dispute about the fact that at the time of occurrence of the alleged incident, in which deceased was killed, Appellant herein was JCL. The provisions of the J.J. Act, therefore, would apply to the present case. It is a special enactment relating to the children who are in need of care, protection, development, treatment, etc. Apart from other provisions, Sections 12 of the J.J. Act provides for grant of bail to JCL. Relevant provisions reads thus:

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 persons 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 1[or a place of safety, as the case may be] 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.

8. Perusal of the aforesaid provision abundantly makes it clear that notwithstanding anything contained in Code of Criminal Procedure or any other law for the time being enforce, JCL be released on bail or placed under supervision of Probation Officer or under the care of any fit person. This provision, therefore, indicates that the criteria to be considered for grant

of bail under Section 439 of Cr.P.C. would have no application while deciding the application for bail filed by the JCL. Meaning thereby, even severity of the crime by itself would not become a ground for rejection of bail application.

9. Proviso to Section 12 however empowers the Court not to release JLC in following three eventualities, if it has reasonable ground to believe existence of any one of them.

- (i) The release of JCL is likely to bring that person into association with any known criminal.
- (ii) Expose the said person to moral, physical or psychological danger.
- (iii) The person's release would defeat the ends of justice.

Thus, JCL shall not be released only if there appears reasonable grounds for believing any one of above situations. When existence of appearance of reasonable ground to believe is prerequisite for rejection of bail, there must be a case for "reason to believe". Section 26 of Indian Penal Code defines it as "A person is said to have 'reason to believe' a thing, if he has sufficient cause to believe that thing but

not otherwise". This makes it further clear that there must be sufficient cause to believe, meaning thereby the belief so recorded has to be supported by material which would disclose such 'cause' to form a belief.

10. Therefore, when the JJB or Court, or as the case may be, refuses to release JCL on bail it must record reasons and indicate the circumstances and material relied upon for the same. In order to decide as to whether a person is likely to come into association with any known criminal, the report of the Probation Officer is necessary. In absence of such report, the Court/JJB would not be able to hold that the JCL is likely to come into association with any known criminal. As regard psychological danger to JCL on his release on bail is concerned, there has to be assessment of JCL by a psychiatrist who would ascertain his psychological state and only thereafter it can be said whether JCL would be exposed to psychological danger. Similarly some material need to be collected to say that release of JCL will expose him to moral or physical danger. Needless to say that in absence of the said assessment it is not possible for any Court to

arrive at any conclusion and to record reasons for denying bail on these grounds.

11. In the light of the above provisions if the impugned order is perused then it shows that except for reproducing the relevant contents of the proviso to Section 12, there are no reasons recorded for denying the bail and the circumstances which led to such decision. Admittedly the report of Probation Officer was not before the trial Court in order to assess the likelihood of JCL to come into association with any known criminal on his release on bail nor there was as report of the psychiatrist to ascertain his psychological condition. Pertinently, even the third aspect i.e., as to how the release of the JCL on bail would defeat the ends of justice has not been dealt with by the trial Court. The impugned order, therefore, is passed on the basis of surmises and conjectures. In such circumstances, the impugned order cannot sustain being contrary to the provisions of Section 12 of the J.J. Act.

12. Learned Counsel for the Appellant seeks enlargement of the Appellant on bail, however, such

request cannot be considered at this stage by this Court keeping in mind the intent of Section 12 of J.J. Act. Purpose is not only to release JCL on bail but also to ensure that he is not likely to be come into association of any known criminal or he is expose to moral, physical or psychological danger. Once it is held that the impugned order passed by the trial Court is not sustainable for want of report of Probation Officer as well as Psychiatrist, it would be unjust to the JCL if this Court directs release of JCL on bail without considering these reports. The only option left to the Court is to set aside the impugned order with appropriate directions to the trial Court to decide application Exh. 7 afresh after obtaining reports from Probation Officer and Psychiatrist and any other relevant material required for determination of application . Hence, following order:

O R D E R

- 1) Appeal is allowed.
- 2) Impugned order dated 04th October, 2022 passed below Exh. 7 in Sessions Case No. 18 of 2022 is set aside.
- 3) Learned trial Court to decide Application

Exh. 7 filed in Sessions Case no. 18/2022 afresh after obtaining report of Probation Officer on the aspect of likelihood of JCL to come into association of any known criminal on his release and the report of Psychiatric from Government Hospital to ascertain as to whether he would be exposed to any psychological danger.

- 4) It is open for the trial Court to consider any other material on record to decide application in view of provision of Section 12 of J.J. Act.
- 5) Application Exh. 7 be decided within a period of 2 month from the date of receipt of the order of this Court.
- 6) Parties to act upon an authenticated copy of this order.

(R.M. JOSHI, J.)

Malani