

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 174 OF 2023

CCL, Age: 19 years, Occ.- Student,
R/o Rajwada, Pathardi Gaon,
Tal. Nashik, District Nashik.

CCL through his father as a
guardian,

Gulshan S/o Salim Pathan,
Age: Major, Occ.- Labour,
R/o Rajwada, Pathardi Gaon,
Tal- Nashik,
District Nashik.

... Appellant

Versus

1. The State of Maharashtra

2. Sanjay S/o Madhukar Pawar,
Age: 42 years, Occ. Labor,
R/o Rajguru Nagar, Shirdi,
Tal- Rahata, Dist. Ahmednagar.

... Respondents

.....
Mr. Joyeb I. Shaikh, Advocate for the Appellant.
Mr. S. J. Salgare, APP for Respondent No.1-State
.....

**CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATE : 15.06.2023

JUDGMENT [ABHAY S. WAGHWASE, J.] :

1. By invoking provisions under Section 102 of The Juvenile
Justice (Care and Protection of Children) Act, 2015 [Juvenile Justice

Act], child in conflict with law [CICL], has put up prayers for grant of bail, through his natural guardian father, by virtue of his arrest in crime no. 0237 of 2021 registered at Shirdi Police Station, District Ahmednagar dated 29.06.2021 for commission of offence under Sections 302, 307, 120-B, 201 r/w 34 of the Indian Penal Code [IPC] and under Sections 3(2)(v), 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. Heard.

3. It is pointed out that present CICL is apprehended on allegations that on 29.06.2021, he and other accused approached informant Sanjay and deceased Rajendra seeking match box. Allegations are leveled that deceased Rajendra, instead of directly handing over match box to the accused persons, kept it on the bicycle seat and asked accused persons to themselves pick it up. It is alleged that on such petty count, two amongst the four persons, who had come there on two motorcycles, assaulted deceased Rajendra with sharp weapon on head and abdomen. It is alleged that deceased Rajendra after taken to hospital, succumbed to the injuries and hence the crime came to be registered.

4. Referring to the above backdrop, learned counsel for the appellant would submit that at the outset FIR is against unknown persons for carrying out assault with unknown weapons. It is pointed out that at the time of FIR, no detail description of so called assailants was given for rendering a clue to the investigating machinery to trace the culprits. Subsequently, information was given by supplementary statement but that too was vague and therefore it is submitted that nothing was clear as to who were the assailants. That, without any foundation, a false story of some frivolous dispute between a co-accused and deceased, is developed.

5. It is next submitted that in fact present appellant was barely 17 years of age at the time of alleged incidence and therefore, when investigating machinery itself realized that he was a juvenile, he was referred to the juvenile board. That, papers on record also clearly demonstrate that appellant is a minor and he fell in the definition of a “juvenile” of the Juvenile Justice Act. In such backdrop, it is emphasized that appellant was expected to be treated as a child in conflict with law and is therefore entitled for protection under Section 12 of Juvenile Justice Act and he ought to have been set at liberty. Learned counsel took us through the provisions of Juvenile Justice Act and would submit that the object of the legislation has been thereby

frustrated by not treating the appellant as juvenile and moreover, keeping him detained for a long time.

6. It is submitted that now investigation is over. Nothing incriminating has come on record during entire investigation. Therefore learned Judge, Children's Court, Kopargaon ought to have allowed Exhibit 36 which was pressed into service for relief of bail. However, learned Judge has failed to consider and appreciate the settled legal position while dealing with the case of a juvenile and has refused bail without assigning proper reason and justification. Hence, appeal is sought to be allowed.

7. Per contra, learned APP would point out that though juvenility of appellant is not disputed, he is found to be involved in a serious offence like murder. Investigation revealed his complicity and he was also armed with deadly weapon with which assault was mounted on deceased Rajendra in the backdrop of previous enmity. Learned APP emphasized that investigation revealed that before committing offence, a conspiracy was hatched and there is also charge to that extent. That, after preliminary assessment, special court though found him to be juvenile, has after due consideration held that he deserves to be dealt as an adult and so accordingly tried. Therefore, taking into

consideration all attending circumstances, it is his submission that, learned Special Judge has committed no error in refusing bail in spite of availability of protection by virtue of section 12 of the Juvenile Justice Act.

8. We have given considerable thought to the above submissions. It is admitted position that appellant is a child in conflict with law. He is alleged to be involved in offence of murder of one Rajendra Dhivar. The alleged incident of assault is said to have taken place in the early evening of 29.06.2021 on Ahmednagar-Manmad road. Precise case of prosecution is that there was dispute between family of deceased and their neighbour Amole Londhe and his family. Thereafter, conspiracy was alleged to be hatched, which investigating machinery claims to be involving present appellant with other accused, i.e. to commit murder of deceased Rajendra. Papers show that FIR is apparently against four unknown persons for committing assault by unknown weapons. Record shows that present appellant is arrested on 25.07.2021. Charge sheet shows that present appellant gave memorandum on 27.07.2021 under Section 27 of the Evidence Act regarding handing over weapon. Therefore, while opposing and refusing bail, such material seems to have been taken recourse to.

9. Here, thrust for bail is on the premise of benefit of Section 12 of the Juvenile Justice Act. For the sake of clarity and brevity, we propose to reproduce the provision:

“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.

- (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 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.”

10. Papers show that by order dated 07.03.2013, the then Principal District and Sessions Judge, Ahmednagar notified the District Judge-1 and Additional Sessions Judge, Kopargaon to act as Judge of ‘Children Court’. By virtue of circular issued by the Principal District and Sessions Judge, Ahmednagar dated 07.03.2013, the Principal Magistrate, Juvenile Justice Board [JJB], Ahmednagar ordered production of CICL before Children’s Court, Kopargaon. Said Principal Magistrate of JJB, by its order dated 22.10.2021 directed that record and proceedings of C.R. No.237/2021, i.e. instant crime, be transferred to Children’s Court by invoking Section 18(3) of Juvenile Justice Act, further directing the Investigating Officer to keep appellant present before the Children’s Court, Ahmednagar. We have also come across statement of appellant recorded by the Board on

08.10.2021. In fact, it is to be noted that said statement is in confessional form.

11. It seems that application Exhibit 36 was pressed into service before Children's Court, Kopargaon thereby *inter alia* seeking bail on the ground of false involvement; non-availability of *prima facie* evidence to connect him; investigation to be completed; charge sheet to be filed; further detention not necessary, long period of conclusion of trial, no previous criminal antecedents and undertaking of abiding conditions which would be imposed on him.

12. Such bail application seems to have been turned down by learned Judge, Children's Court by order dated 13.09.2022 holding that appellant was 17 years old at the time of incident, however JJB, on preliminary assessment, reached to the conclusion that he is involved in a heinous offence in spite of understanding the consequences of the offence and thus, needs to be tried as an adult. Learned Special Judge held that there is disclosure at the instance of co-accused no.1 which revealed hatching of conspiracy with the CICTL and other co-accused and in pursuant to the conspiracy, CICTL with other co-accused committed murder. That there is also a disclosure statement at the instance of CICTL and therefore, there being *prima*

facie evidence of his involvement for commission of offence under Section 302 of IPC, he further being not a local resident, and initially shown to be absconding and also taking into consideration the aspect of possibility of commission of similar offence if granted bail, his bail application was rejected. Hence, the present appeal before us.

13. On giving careful thought to the above material, and on focusing over the above reproduced provision under Section 12 of the Juvenile Justice Act, taking note of the legislative intent and object of its incorporation, we are of the considered opinion that in Section 12 of the Juvenile Justice Act which deals with bail of CICL, there is statutory mandate providing for grant of bail to CICL irrespective of the nature and gravity of the offence allegedly committed by him. The word “shall” contained in the provision makes it mandatory on the court to grant bail irrespective of the nature of the offence. No doubt, **proviso** to Section 12 (1) spells out discretion to refuse, but only **when it is shown that, firstly**, there are reasonable grounds for believing that releasing CICL is likely to bring him in association with known criminals thereby exposing him to moral, physical and psychological danger and **secondly**, his release would defeat the ends of justice.

14. The embargo by virtue of proviso to Section 12(1) of the Juvenile Justice Act would come into play in only above two contingencies and therefore, in the light of such statutory requirements, in our opinion, prosecution is duty bound to satisfy the court dealing with the bail proceedings about availability of such contingencies for dis-entitlement of relief of bail to the CICL.

15. Keeping in mind above statutory requirements, if we examine the evidence on record, we did not come across material indicating likelihood of CICL again getting associated with co-accused who also are not *prima facie* shown to be hardened criminals. The co-accused are residents of Shirdi, Pathardi Gaon, Nashik and Thane respectively, whereas, CICL before us is shown to be resident of Rajwada, Pathardi Gaon, Taluka and District Nashik. Therefore, mere apprehension expressed by prosecution as well as learned Children's Court, about likelihood of such eventuality taking place is no sufficient ground to refuse bail. Similarly, as to how and in what manner there is apprehension of danger to the moral, physical or psychological well being of the CICL is also not demonstrated before us. Likewise, how ends of justice would be defeated is also not satisfactorily shown to us while opposing the relief of bail.

16. Under such circumstances, when Section 12 of the Juvenile Justice Act makes it imperative for a court of law to release a CICL, who is alleged to be involved in a non-bailable offence, the mandate needs to be respected and adhered to. As stated above, we have not been shown any material in the backdrop of contingencies spelt out in the proviso to Section 12(1) of Juvenile Justice Act, so as to refuse benefit of the said provision. It has not been pointed out to us that CICL appellant has a propensity to indulge in crimes. Mere memorandum of disclosure and discovery during PC is not a good ground to refuse bail, more particularly when investigation is already completed and charge sheet is filed. Likewise, though he is shown to be previously involved in a crime at Nashik, the stage of the proceedings are not made known to us. We would also like to point out that Special Judges of Children's Court should deal with bail applications of CICL in very sensitive manner. The impugned order is passed as if applicant is an adult.

17. In the above backdrop, we are of the opinion that being CICL, there being no reason or justification for depriving or denying him the benefit of mandatory statutory bail, appellant succeeds and we accordingly proceed to pass the following order:

ORDER

1. Appeal is allowed.
2. The order passed by Judge, Children's Court, Kopergaon on Exhibit 36 dated 13.09.2022 is hereby set aside.
3. The appellant be released on P.R. of Rs. 25,000/- with two sureties in the like amount, who shall be his own parent and close relative.
4. Natural guardian father of the appellant herein shall give an undertaking that he would take proper care of his child and said child would not indulge in any criminal activity while on bail and he shall be produced before the Children's Court as and when required.
5. The Juvenile Justice Board, Ahmednagar to inform about release of applicant on bail to Probation Officer or the Child Welfare Officer as per the provisions of Section 13(2) of the Juvenile Justice (Care and Protection of Children) Act, 2015.
6. The appellant shall not directly or indirectly induce, threaten or tamper with the witnesses.

[ABHAY S. WAGHWASE, J.]

[SMT. VIBHA KANKANWADI, J.]