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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **BAIL APPLN. 858/2024**

CCL R

..... Applicant

Through: Mr. Mir Akhtar Hussain
and Ms. Sonia Goswami,
Advs.

versus

STATE NCT OF DELHI

..... Respondent

Through: Mr. Utkarsh, APP for the
State with Insp. Mukesh
Kumar, PS Janak Puri.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

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07.03.2024

CRL.M.A. 7458/2024 (*exemption from filing certified copies of annexures*)

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

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3. The present application is filed under Section 438 read with Section 482 of the Code of Criminal Procedure, 1973 (CrPC), seeking grant of pre-arrest bail, in FIR No. 508/2023 dated 26.12.2023, registered at Police Station Janak Puri, for offences under Section 302/34 of the Indian Penal Code, 1860 (IPC).
4. The FIR was registered on the information received from the brother of the victim alleging that his brother was beaten to death by the accused persons. It was alleged that one of the accused persons is the present applicant, who is a minor.
5. During the investigation, CCTV was recovered and the accused persons including the present applicant, were identified.



6. The learned counsel for the applicant submits that the applicant has been falsely implicated. No specific role has been attributed to the applicant.

7. He submits that the applicant has clean antecedents.

8. He further submits that once it is admitted that the applicant is a juvenile in terms of Section 12 of the Juvenile Justice Act (**JJ Act**), 2015, the bail ought not to be rejected.

9. He submits that this Court, in the case of *Sandeep (In J.C.) v. The State NCT of Delhi : 2007:DHC:834*, had held that seriousness of the allegations and the gravity of the charge are not relevant in case of a juvenile accused requesting for bail.

10. He submits that only when the conditions, as specified under Section 12 of the JJ Act, 2015, that there appears a reasonable ground for believing that the release is likely bring that person into association with any known criminal or expose the said person to moral, physical or psychological danger, a bail can be rejected. He submits that the Juvenile Justice Board, in such circumstances, has to record the reasons for denying the bail.

11. He further relies upon the decision of the Hon'ble Allahabad High Court, in the case of *Mohammad Zaid v. State of U.P. and Another : CRIMINAL MISC. ANTICIPATORY BAIL APPLICATION No. 8361 of 2020* and other connected matters, to contend that the inquiry under Section 14 of the JJ Act, 2015 and the preliminary assessment under Section 15 of the JJ Act, 2015 can be done while the child in conflict is on anticipatory bail.

12. The learned Additional Public Prosecutor for the State opposes the grant of bail to the applicant. He submits that the applicant is an active member of the Billa Gang.



13. He submits that the CCTV footage clearly shows that the applicant was found to be brutally assaulting the victim, which led to death of the victim.

14. He submits that the applicant is seventeen years and six months old and in terms of Section 15 of the JJ Act 2015, he understands the consequences of the offence and the circumstances in which it was committed and the applicant is to be tried in terms of the provisions of the CrPC.

15. He further submits that the judgment passed by this Court in the case of *Sandeep (In J.C.) v. The State NCT of Delhi (supra)*, is even otherwise not applicable to the facts of the present case. He submits that the JJ Act, 2000. was amended in the year 2015 and it was specifically provided that the juvenile may not be ordered to be released in case the conditions, as provided therein, are satisfied.

16. I have perused the CCTV footage produced in the Court. It is apparent that the applicant is not of a tender age and is found to be brutally assaulting the victim, which led to the death of the victim.

17. Section 12 of the JJ Act, 2000 reads as under:

“12. Bail of juvenile.—(1) When any person accused of a bailable or non-bailable offence, and apparently a juvenile, is arrested or detained or appears or is 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 institution or fit person] but he shall not be so released if there appear reasonable grounds for believing that the release 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.



(2) When such person having been arrested is not released on bail under sub-section (1) by the officer incharge of the police station, such officer shall cause him to be kept only in an observation home in the prescribed manner until he can be brought before a Board.

(3) When such person is not released on bail under sub-section (1) by the Board it shall, instead of committing him to prison, make an order sending him to an observation home or a place of safety for such period during the pendency of the inquiry regarding him as may be specified in the order.”

18. The JJ Act of 2000 was replaced by the JJ Act of 2015.

Section 12 of the JJ Act, 2015 reads as under:

“ 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 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.”

19. In terms of Section 15 of the JJ Act, 2015, the Board is required to make preliminary assessment into heinous offences when allegedly committed by a juvenile. It provides that if the heinous offences alleged to have been committed by a child who has completed or is above the age of sixteen years, the Board shall conduct a preliminary enquiry with regard to his physical and mental capacity to commit such offences and pass an order in accordance with the provisions of Sub-Section (3) of Section 18 of the JJ Act, 2015.

20. The applicant, in the present case, has not been apprehended and therefore, no preliminary assessment in terms of Section 15 of the JJ Act, 2015 could be carried out. It is relevant to note that Section 18(3) of the JJ Act, 2015 provides that where the Board, after preliminary assessment under Section 15 of the JJ Act, 2015, passes an order that there is a need for trial of the said child as an adult, the Board may order transfer of the trial to the Court having jurisdiction to try such offences.

21. The offence of murder and the manner in which it has been committed, is heinous in nature. The applicant admittedly is not of a tender age.

22. In ***Sandeep (in J.C) v. The State NCT of Delhi*** (*supra*), this Court granted bail to the juvenile noting that the learned Trial Court has not applied its mind as to whether release of the petitioner would expose him to physical or psychological danger

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or bring him into association with a known criminal. It was noted that the gravity of the offence is not a predominant criteria and *sans* the considerations as noted, the bail shall be granted.

23. It is though correct that the object and purpose of the Juvenile Justice Act is the welfare of the juvenile and while considering the application for bail, nature and gravity of the offence is not to be kept in mind. The object is the well-being and the protection of the juvenile. Considering the said object, the Legislature has incorporated the provision where the bail shall not be granted where it appears that the release is likely to bring the juvenile into association with any known criminal or expose him to moral, physical or psychological danger.

24. It has specifically been alleged that the applicant is member of a gang which is run by the co-accused, Pankaj Sharma, which also consists of other members including the brother of the applicant, who has also been arrested in relation to the present offence. The complainant has alleged that his brother was killed by the accused persons due to the previous rivalry.

25. In such circumstances, as noted by the learned Trial Court, there are reasonable grounds for believing that the release of the applicant is likely to bring him into association with known criminal or expose him to moral, physical or psychological danger.

26. It has specifically been pointed out that there are other gang members who have not been arrested and there is also likelihood that the members of the rival gang might approach the applicant for seeking vengeance. There are chances that the family of the applicant may not be able to provide any physical or psychological support to the applicant from the danger as noted above.



27. Considering the facts, as stated above, this Court is of the opinion that the applicant ought not to be granted any order for release on bail.

28. The present bail application is dismissed in the aforesaid terms.

AMIT MAHAJAN, J

MARCH 7, 2024 / 'KD' / HK