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

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Date of Decision: 28th May, 2024

+ CRL.A. 359/2024

JUVENILE SH

..... Appellant

Through: Ms. Sneha Singh and Mr. Anant
Kumar Asthana, Advocates.

versus

THE STATE NCT OF DELHI

..... Respondent

Through: Ms. Richa Dhawan, APP with
Inspector Neeraj Kumar, PS: Anand Parbat, for
State.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGMENT

JYOTI SINGH, J. (ORAL)

1. This appeal has been preferred on behalf of the Appellant under Section 101(5) of the Juvenile Justice (Care and Protection of Children) Act, 2015 ('JJ Act') read with Section 103(2) of the JJ Act and Sections 372/386 Cr.P.C. against order dated 20.02.2024 passed by the Children's Court whereby bail application of the Appellant filed under Section 12 of the JJ Act has been dismissed.

2. Status report has been filed on behalf of the State and as per the case of prosecution, on 08.02.2019, an information was received vide DD No. 70A that an incident had occurred in Street No. 10, Taliwali Basti, Anand Parbat. On reaching the spot, Police team found that crowd had gathered and blood stains were found in the street. Inquiry revealed that someone had



stabbed Kudrat Tull, who had been rushed to LHMC Hospital by the PCR staff. The deceased was declared 'brought dead' in the hospital. MLC No. 34/2019 reflected that the deceased was 14 years of age and was brought with alleged history of stabs on chest wall outside his own house. Exhibits including blood stains/earth control were seized from the spot of the incident along with one slipper of the deceased with blood stains. Spot was inspected and photographed by the Crime Team staff.

3. It is further stated in the report that statement of one eye-witness namely, Aamir Khan, aged 16 years was recorded by the IO, wherein he stated that on 08.02.2019 at about 07:00-07:15 PM, he was sitting in the street around the bonfire with his friends including the deceased. CCL SH along with his three associates reached the spot. One of the associates of CCL SH caught hold of the deceased and two of them asked CCL SH and another associate to kill the deceased. Thereafter, CCL SH and his associates dragged the deceased in Gali No. 10 where CCL SH and his two associates caught hold of the deceased and one associate stabbed him with a knife, due to which the deceased started bleeding profusely and was later declared 'brought dead'. On the basis of the investigation conducted, final report was filed against CCL SH and others for commission of offence under Sections 302/34 IPC before the Juvenile Justice Board. Preliminary assessment under Section 15(1) of the JJ Act was conducted and the Board opined that there was a need of trial of CCL SH as an adult and in compliance of Section 18(3) of the JJ Act, trial *qua* the CCL SH was transferred to the Children's Court.

4. Learned counsel for the Appellant submits that bare reading of Section 12 of the JJ Act suggests that it is mandatory to consider possibility



of enlargement of a child on bail at the earliest opportunity, irrespective of the nature of the offence and this can be denied only if the person granted bail will be in association with known criminals or will be exposed to moral, physical, psychological danger or defeat the interest of justice. Children's Court has given a finding in the impugned order regarding there being a risk of the juvenile coming into association with known criminals. However, there is nothing in the order which remotely indicates as to who are the known criminals with whom CCL SH would be associated, if released on bail. CCL SH has been in the Place of Safety for almost 1000 days and is completely cut off from any association with anyone in the world outside the Institution.

5. It is argued that there is no statement of any material witness under Section 164 Cr.P.C. inspite of an alleged eye-witness being there in the matter. The alleged murder weapon has not been recovered from the CCL SH or at his instance and despite several CCTV cameras being installed around the spot, there is no CCTV footage of the incident. Most importantly, it is argued that both the co-accused persons, who were alleged to be the main culprits of the crime and were being tried as adults before the Sessions Court were initially enlarged on bail vide order dated 06.06.2023 and were subsequently acquitted vide judgment dated 20.03.2024.

6. It is further submitted that CCL SH was apprehended in the present case on 09.02.2019 and continued to be in protective custody till 20.04.2020. He was released on bail vide order dated 20.04.2020 and surrendered on 25.08.2022 before the Children's Court and sent to judicial custody in Tihar jail and thereafter again taken into protective custody, which continues till date. Therefore, CCL SH has been in



incarceration for approximately 1000 days till the filing of this appeal in April, 2024.

7. Ms. Richa Dhawan, learned APP appearing on behalf of the State argues that CCL SH had the requisite mental capacity to commit the crime which is grave and heinous. He is also involved in another murder case in FIR No. 450/2017 and in this backdrop, it is essential that he remains in protective custody which will also ensure that there is no physical or psychological danger against the CCL SH, if he is released on bail.

8. Heard.

9. Scope of Section 439 Cr.P.C. regarding grant of bail is different than under Section 12 of JJ Act. Under Section 12, granting of bail is a rule and as per proviso, bail to a child can be denied only when: (a) Court is of the opinion that there is a danger that child's release is likely to bring the child into association with any known criminal; (b) there is a risk of moral, physical and/or psychological safety of the child; and (c) if the child's release would defeat the ends of justice. In ***CCL 'A' v. State (NCT of Delhi), BAIL APPLN. 2510/2020***, decided on 19.10.2020, this Court has held that Section 439 Cr.P.C. has no application to the issue of grant or denial of bail to a juvenile as being a juvenile the child is to be dealt with by a special Statute i.e. the JJ Act, which contains a specific provision for bail i.e. Section 12. It was also observed in the judgment that if a juvenile is denied bail by the JJB and/or the Children's Court, it is available for the juvenile to file an application before the High Court under Section 12 of the JJ Act seeking bail and it is not necessary that bail plea is filed as an appeal under Section 101(2) of the JJ Act meaning thereby that the remedy invoked by the present CCL SH is the correct remedy.



10. Perusal of the impugned order shows that Court had rejected the bail plea of CCL SH on the ground that the eye-witnesses were yet to be examined and there was a danger that if the CCL SH was released, there was a likelihood of his association with hardened criminals which would pose a risk of moral, physical and psychological damage to the CCL SH and considering the role played by him in commission of crime, in case he was released on bail, the same would defeat the ends of justice. However, after the said order was passed, as a matter of judicial record, the two co-accused Faisal and Ajay @ Golu have been acquitted by the Sessions Court vide judgment dated 20.03.2024 in SC No. 567/2019 under Sections 302/34 IPC. Noticeably, the only eye-witness PW-2 Aamir Khan on whose complaint the FIR was registered has not supported the case of the prosecution. He deposed before the Sessions Court that: he did not remember the exact date and month of the incident, but 3 to 4 years ago the incident happened near police chowki Taliwali Basti, Anand Parbat; he was present in his house and watching TV when he heard some noises outside the gali; on coming out of the house, he learnt that one boy had been murdered by somebody; the injured boy had already been taken to the hospital prior to his reaching the spot; at about 11:00 PM, Police took him to the police station where he was kept till 03:00 PM and on the next day, he left for his native village and never returned; and he did not know who killed the deceased. On being recalled for further examination-in-chief, he did not identify his LTI (Left Thumb Impression) on the site plan and also failed to identify the accused persons present in the Court. PW-2 was declared hostile by the prosecutor and was cross-examined at length, in which he withstood his statements made during examination-in-chief. On the basis of this testimony, Sessions



Court observed that the complainant, who was the star witness of the prosecution did not corroborate his version given earlier and did not identify the accused. PW-3 deposed that she learnt of the facts from PW-2 and her testimony was of no use to the prosecution case being hearsay evidence. PW-4 stated facts relating to the period after the alleged incident. Examining the testimony of other witnesses and the FSL report, Court concluded that prosecution had failed to bring home the charges against the two adult accused and proved the case beyond reasonable doubt and in this backdrop acquitted them. In my view, once the main accused persons have been acquitted on the ground that the eye-witness has turned hostile and prosecution failed to prove its case beyond reasonable doubt, no purpose will be served by continuing the incarceration of CCL SH.

11. Insofar as the Proviso to Section 12 of JJ Act is concerned, learned counsel for CCL SH is correct in her submission that there is no reason or basis in the impugned order which supports the conclusion of the Court that the case of CCL SH comes under the exception to Section 12, disentitling the CCL SH to bail. Nominal roll was requisitioned and has been sent by Superintendent, POS/SHB which reflects that as on 27.05.2024, CCL SH has undergone 2 years 11 months and 13 days of custody period. Nominal roll also reflects that CCL is on a reformatory path attending various therapy classes inside the Institution as well as training courses and is keen to learn cooking, dancing, art and other curricular activities.

12. Upon a conspectus of the foregoing facts and circumstances, CCL SH is admitted to regular bail pending the proceedings against him, subject to the following conditions:-



- (a) CCL SH shall furnish a personal bond in the sum of Rs.15,000/- with one surety of the like amount by his mother to the satisfaction of the learned Children's Court; and
- (b) A Probationary Officer shall be appointed for CCL SH, who shall maintain general oversight and supervision over CCL SH including by visiting CCL SH from time-to-time, as may be deemed necessary, to ensure that CCL SH does not fall into any undesirable company and is not exposed to any moral, physical or psychological danger or that his release, in any manner, defeats the ends of justice.
13. Nothing in this order shall be construed as an expression on the merits of the case.
14. The appeal is disposed of in the aforesaid terms.
15. Copy of the order will be sent to Superintendent, Place of Safety/Special Home for Boys, 1-Magazine Road, Majnu Ka Tila, Delhi, (E-mail: placeofsafety22@gmail.com and Mob. No. 7840044281) for information and compliance.

JYOTI SINGH, J

MAY 28, 2024/BSR/shivam