

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Crl R No.22/2023

Reserved on : 31.01.2024
Pronounced on : 19.02.2024

“X” Juvenile ...Petitioner(s)

Through:- Mr. Azhar Usman Khan, Advocate

V/s

Union Territory of J&K through
Incharge Police Station, Supwal, Samba

...Respondent(s)

Through:- Mr. Vishal Bharti, Dy. AG

Coram: HON’BLE MR. JUSTICE SANJEEV KUMAR, JUDGE

JUDGMENT

1. This revision petition under Section 102 of the Juvenile Justice (Care and Protection of Children) Act, 2015 [“the Act of 2015”], filed by “X” Juvenile through his father S. Trilok Singh, is directed against an order dated 25.05.2023 passed by the Court of learned Additional Sessions Judge, Samba [“the Appellate Court”], whereby it has upheld the order dated 04.01.2023 passed by the Principal Juvenile Justice Board, Jakh, Samba [“the Board”] on the bail plea of the juvenile.

2. Briefly stated, the facts leading to the filing of this revision petition are that on 24.09.2022, a written complaint was filed by one Jasvinder Singh resident of Vijaypur against Vikas Salathia, Vasudev alias

Shunu and Rohit alias Makhan for attempting to murder his brother Balwinder Singh S/o Harpal Singh R/o Vijaypur, Samba. It was alleged that on 24.09.2022 at about 1100 hrs, Balwinder Singh along with one Sourab Baloria were going towards Supwal on Motorcycle and when they reached near Barian near Hanuman Road, above named accused persons hit the motorcycle with unknown vehicle due to which Balwinder Singh and Sourab Baloria riding the motorcycle fell down. The accused then shot at Balwinder with an intention to kill him. They even attacked Balwinder Singh with sharp-edge weapon ("Toka"). Balwinder Singh got seriously injured and was referred to a Hospital in Amritsar for further treatment. On this information, FIR No.239/2022 under Sections 307, 323, 34 IPC and 3/4/25 Arms Act was registered and investigation was entrusted to ASI Ibrar-Ul-Haq Inchare Police Post, Supwal.

3. During the course of investigation, accused Rohit, Vasudev alias Shunu and Vikas Salathia were arrested in the case and were subjected to sustained interrogation. As per the police investigating the matter, accused Rohit and Vasudev confessed their involvement and on their identification, weapons of offence i.e. *One Pistol and one Toka were recovered*. It seems that from the further investigation in the matter and recording of statements of the eye witnesses including the eye witness Sourab Baloria, it came to fore that apart from Rohit, Vasudev, Atul Choudhary, Avtar Singh, Mohd. Ismail, the petitioner herein "X" Juvenile was also involved in the instant case. Accordingly, the remaining accused, too, were arrested. Since the petitioner was juvenile at the time of

commission of crime, he was, thus, produced before the Board and on the orders of the Board, the petitioner was sent to the Observation/Remand Home, R.S.Pura, Jammu.

4. The petitioner moved an application before the Board for bail primarily on the ground that he was not involved in the commission of crime but later on falsely implicated. He also submitted that he being a juvenile is entitled to bail under Section 12 of the Act of 2015 as a matter of right.

5. The bail application was opposed by the APP appearing for the Union Territory on the ground that as per the police report, an FIR for heinous offence under Sections 307/326/34 IPC and 3/25 & 4/25 Arms Act has been registered in which the involvement of the petitioner has been established. It is submitted that the petitioner along with other anti-social elements has created panic in the area and terror in the minds of innocent people. If the petitioner is released on bail, there is every possibility that he will jump over the bail and temper with the prosecution witnesses.

6. The Board considered the rival contentions and having regard to the evidence collected during investigation came to the conclusion that the petitioner, who is admittedly a child in conflict with law, is involved in various cases and there is every likelihood of his repeating the offence, if released on bail. It was also observed by the Board that in case juvenile is released on bail, when other co-accused are in jail, it may expose the juvenile to moral, physical and psychological danger. Strong reliance was

placed by the Board on the social background report obtained by it. The reasoning given by the Board to deny the bail is given in paragraph No.15 of the order dated 04.01.2023, which, for facility of reference, is reproduced hereunder:-

“15. Social background report has been ascertained in which it has been clearly mentioned under the habits column of the child in conflict with law that he uses drugs (herioen) and that was one of the main reasons for leaving his school besides some other reasons. Perusal of the CD file reveals the prima facie involvement of the child in conflict with law in the alleged commission of heinous offence. All other co-accused are behind bar and release of juvenile in conflict with law may expose him to moral, physical or psychological danger. Here in this case the accused persons in furtherance of their common intention have caused such bodily injury as is likely to cause death and attempted murder which is a heinous offence. The accused persons have committed barbaric attack on the injured as both his legs and arms are not in working condition and one arm has been amputated (sick). The age of the child in conflict with the law at the time of commission of offence was 17 years 10 months and 16 days. Thus it can be easily presumed that he had the sufficient maturity and had the reasonable understanding of the offence which was committed by him along with the gang of other accused persons. Moreover the I.O. has also stated that the child in conflict with law had also been involved in various cases which points towards child in conflict with law being habitual offender who had committed heinous offences and there is every likelihood of the offence being repeated. The other co-accused are behind the bar and release of juvenile in conflict with law at this stage may expose him to moral, physical and psychological danger. Therefore under these circumstances enlargement of the child in conflict with law on bail at this stage would defeat the ends of justice and is likely to bring him in association any any known criminal as he has the antecedents of the drug abuse. I.O. has stated that the investigation of the case is still going.”

7. Feeling aggrieved by order dated 04.01.2023 passed by the Board, the petitioner filed an appeal purportedly under Section 101 of the

Act of 2015 before the Appellate Court. The matter was considered by the Appellate Court in the light of arguments addressed by both the sides. Having regard to the case law on the point, the Appellate Court, vide order dated 25.05.2023, while dismissing the appeal, concurred with the view taken by the Board that the petitioner was not entitled to be released on bail only on the ground that he was juvenile. The reasoning given by the Appellate Court is contained in para Nos.19 to 22, which, for facility of reference, are set out below:-

“19. In this case, the age of the child in conflict with law at the time of commission was 17 years 10 months and 16 days, the accused person and present child in conflict with law with their common intention have committed the heinous offence mentioned above and the victim has suffered injuries almost on all body parts wherein his legs, arms are not in working condition and even one arm has been impute.

20. Section 12 categorically states that when a juvenile is arrested or detained shall not be so released if their appear reasonable ground for believing that is likely to bring him into association of any known criminal or expose him to moral, physical and psychological danger or that his release would defeat ends of justice.

21. Here, the juvenile is child in conflict with law is involved in a heinous offence in which he was already in contact/association with known criminal which led to commissions of such heinous offence and if release on bail it would defeat the ends of justice.

22. Keeping in view the condition of victim and also that he can again come in contact with known criminal which can expose him to moral, physical and psychological danger, this appeal is dismissed and prayer for grant of bail is also rejected. Copy of this order be sent to Ld. Pr. Magistrate Juvenile Justice Board Jakh Samba for information.”

8. The impugned order is challenged by the petitioner *inter alia* on the ground that the Board as well as Appellate Court have failed to appreciate that under the Act of 2015, bail to a juvenile is a rule and denial thereof an exception. It is submitted that the Board as well as the Appellate Court did not appreciate the provisions of Section 12 of the Act of 2015 in proper perspective and, thus, treated the petitioner as a regular criminal, who could be denied bail on the ground that he was involvement in a heinous offence or that his involvement in the crime was established during investigation.

9. Heard learned counsel for the parties and perused the material on record.

10. The Act of 2015 is essentially a social welfare legislation and consolidates and amends law relating to children in conflict with law and children in need of care and protection. The legislation is also a medium for the State to give effect to Article 39(f) of the Constitution of India, one of the directive principles of State policy by giving opportunities to children to develop in a healthy manner and in conditions of freedom and dignity. The legislation is also a measure to give effect to the United Nations Convention on the Rights of Children, ratified by India on 11th December, 1992, which requires State Parties to undertake all appropriate measures in case of a child alleged as, or accused of, violating any penal law, including (a) treatment of the child in a manner consistent with the promotion of the child's sense of dignity and worth (b) reinforcing the child's respect for the human rights and fundamental freedoms of others (c) taking into account

the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

11. Apart from elaborate provisions made for the welfare of the children in conflict with law, Section 12 of the Act of 2015 deals with bail to juvenile. Section 12 of the Act of 2015 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 available 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.”

12. From a plain reading of Subsection (1) of Section 12 of the Act of 2015, it clearly transpires that a child in conflict with law i.e. a child who is alleged to have committed a bailable or non-bailable offence, when apprehended or detained by the police or appears or is brought before a Board, is entitled to 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. The expression “shall” used in Subsection (1) makes it obligatory on the Board or Court, as the case may be, before whom a child in conflict with law is produced, to order his release on bail notwithstanding anything contained in the Code of Criminal Procedure or any other law for the time being in force. “Child” as defined in Section 2(12) of the Act of 2015 means a person who has not completed eighteen years of age. Mandate of Subsection (1) of Section 12 of the Act of 2015 pertaining to the grant of bail to a child in conflict with law is, however, subject to exceptions carved out in proviso appended to Subsection (1) of Section 12, according to which, such children shall not be released on bail in the following circumstances:-

- i) If there appears reasonable grounds for believing that release is likely to bring the child in association with any known criminal; or
- ii) Expose the juvenile to moral, physical or psychological danger; or

iii) The person's release would defeat the ends of justice.

13. While denying bail on one or the more circumstances enumerated above, the Board shall record reasons in support of its decision and the circumstances that led the Board to make such decision. From a reading of the proviso reproduced herein above, it becomes amply clear that the proviso is also mandatory in nature. The word "shall" used in the proviso would substantiate this position.

14. Be that as it is, it is a foregone conclusion that in terms of Section 12 of the Act of 2015, bail to a child in conflict with law whether he is allegedly involved in bailable or non-bailable offence is a rule and denial thereof an exception. Denial of bail can only be under the circumstances explained above. The heinousness of the crime or other considerations that may prevail with a Court while considering bail under the Code of Criminal Procedure are not relevant for deciding bail plea of the child in conflict with law.

15. When the order passed by the Board is examined in the light of the clear legal position emerging from Section 12 of the Act of 2015, it can be very well seen that the Board has totally misdirected itself and has rejected the bail plea being largely influenced by the fact that the petitioner is involved in the commission of a heinous crime or that as per the social background report he is a habitual offender. The Board has tried to bring its order within the scope of the proviso to Subsection (1) of Section 12 of the Act of 2015 by stating that in case the petitioner is released on bail, it may

expose him to moral, physical and psychological danger. It is, however, not discernible from the order of the Board as to what was the basis of such conclusion arrived at by the Board. The Board has not in so many words indicated the reasonable grounds for such belief. Admittedly, the other co-accused are behind the bars and, therefore, it is not likely rather possible that the petitioner, after being released on bail, shall come into association with any known criminal. As per the social background report obtained by the Board, the petitioner is already derailed and has left his school. True it is that it has also come in the social background report that the petitioner is addicted to some drugs. Before me as also before the Board and before the Appellate Court it is the father, who has come forward to seek release of the petitioner on bail. In case the petitioner is addicted to drugs, parental care and process of de-addiction from some De-Addiction Centre alone would help the petitioner.

16. In the given facts and circumstances, in my humble opinion the three exceptions carved out in the proviso, which may justify the denial of bail to a juvenile do not exist in the instant case. There is nothing on record which could be termed as requisite ground for believing that the petitioner, if released, is likely to bring him in association with any known criminal. Social background report obtained by the Board does not name any criminal. The co-accused of the petitioner in FIR No.239/2022 are still in jail. There is also no material to indicate that the petitioner, whose bail is sought by his father, would be exposed to moral, physical or psychological danger once he is released on bail.

17. The third circumstance i.e. release of the juvenile would defeat the ends of justice is required to be read in *Ejusdem Generis* with other two circumstances. From a reading of the order of the Board or Appellate Court, it is not discernible as to how the petitioner's release on bail would defeat the ends of justice. The words "ends of justice" used in the proviso appended to Subsection (1) of Section 12 of the Act of 2015 are required to be interpreted, understood and appreciated in the light of the object of the legislation i.e. the Act of 2015. It is only such measure that seeks to address welfare of the child in conflict with law would alone serve the ends of justice.

18. It is true that the petitioner at the time of commission of offence was 17 years 10 months and 16 days old, but that does not make him an adult. Any person below the age of 18 is to be taken as a child under the Act of 2015 and if he is allegedly found involved in commission of bailable or non-bailable offence, he is a child in conflict with law, a term which is envisaged under Section 12 of the Act of 2015.

19. Provisions of Section 15 of the Act of 2015 on which reliance was placed by the learned counsel for the respondent are not applicable in the instant case. In terms of Section 15, preliminary assessment into heinous offences is required to be made by the Board to find out as to whether person is required to be tried as an adult or juvenile. Section 15 is relevant only in respect of trials and has no application to the provisions of Section 12, which operate independently of Section 15.

20. The social background report relied upon by the Board and the Appellate Court, though, indicates that the petitioner is a habitual offender but does not specify the number and particulars of the cases in which the petitioner is so involved. The assessment of antecedents of the accused is required to be made objectively in reference to the material collected. It is only when such information with regard to the antecedents of the juvenile is made available to the Board, it can make an informed opinion that there are reasonable grounds to believe that the juvenile, if released on bail, is likely to bring him in association with any known criminal or expose him to moral, physical or psychological danger. Mere spoken reputation of the juvenile is not good enough to arrive at such objective assessment.

21. For the foregoing reasons and the discussion made above, I do not find the orders passed by the Board and the Appellate Court sustainable in law and the same are, therefore, set aside. The petitioner is held entitled to be released on bail subject to furnishing of personal bond to the tune of Rs.50,000/- with one surety of the like amount subject to following conditions:-

- i) That the petitioner shall appear before the Investigating Officer and the Court as and when required.
- ii) He shall not hamper or temper with the prosecution evidence.
- iv) Petitioner shall not come into contact with co-accused or other persons facing investigation before the police or any court of law.

- v) The petitioner shall not make any inducement or threat or promise to any person acquainted with the facts of the case so as to dissuade him or her from disclosing such facts to the I.O. or Court and he shall not leave the territorial jurisdiction of the Union Territory of J&K without prior permission of the Sessions Court (Principal District Judge), Samba.

22. Before parting with the order, it deserves to be taken note of that both the Principal Magistrate, Juvenile Justice Board and the appellate Court i.e. the Court of learned Additional Sessions Judge, Samba, have failed to maintain secrecy as to the identity of the Juvenile. Probably they are not aware of the provisions of Section 74 of the Act of 2015 and the judgments handed down by Hon'ble the Supreme Court and various High Courts from time to time which clearly prohibit the disclosure of name, address and school or any other particulars which may lead to the identity of a child in conflict with law or a child in need of care and protection or a child victim or witness of a crime, involved in such matter, under any other law for the time being in force. There is also clear prohibition with regard to the publication of the picture of such child.

23. The vulnerability of a child is an attribute of a childhood which is well recognized by the Act of 2015. The incapacity of child to know and inability to assert its rights is a disability associated with juvenility. The aim of the legislatures and the endeavour of the courts is to insulate the child against the cruel vagaries of life which it cannot comprehend and lacks capacity to defend against. One of the most critical

features of the child rights regime is the issue of taint caused by the prosecution and the disability accruing from criminal conviction. The consequent impediments in the reintegration of the delinquent child in the society are issues which are addressed by the legislatures and the courts alike. Some measures like restricted access to records of trials, sealing and destruction of records of prosecution of juvenile delinquents are finding acceptability among legislatures across the world. The Courts have been anonymising trials of children in conflict with law to protect their identities. Reform of children in conflict with law, their reintegration in society and creation of a salutary environment to the children to grow and realize their potentialities is the high purpose to which the legislatures and the courts have directed their efforts. The prime aim and object of Section 74 of the Act of 2015 is to avoid scrutiny of the proceedings in which a juvenile is tried to insulate and protect the juvenile from stigma and emotional trauma. Such being the object of Section 74 of the Act, it is astonishing to note that the Courts are unaware of the provisions of Section 74 of the Act and are unabashedly disclosing the identity of the juveniles facing trial before them or seeking their release on bail, as has happened in the instant case.

24. The Hon'ble Supreme Court in the case of **Shilpa Mittal v. State (NCT of Delhi) and anr, (2020) 2 SCC 787**, has already held that disclosure of identity of a juvenile during investigation, prosecution or even post conviction must always be avoided by all. In para 37 of the judgment *supra*, it has been held thus:-

“ 37. In passing we may note that in the impugned judgment the name of the Child in Conflict with Law, has been disclosed. This is not in accordance with the provisions of Section 74 of the Act of 2015, and various judgments of the courts. We direct the High Court to correct the judgment and remove the name of the Child in Conflict with Law.”

25. It seems that the judgment of Hon’ble the Supreme Court has not been brought to the notice of the Courts working in the Union Territory of Jammu and Kashmir and the Union Territory of Ladakh, and, therefore, they are, with impunity, disclosing the full identity of the juvenile in their orders. It is high time that the Courts in the Union Territories of Jammu and Kashmir and Ladakh are made aware of the provisions of Section 74 of the Act of 2015 and the law laid down by Hon’ble the Supreme Court from time to time.

26. While requesting the Registrar General to circulate this order to all the Courts in the Union Territory of Jammu and Kashmir and the Union Territory of Ladakh, this Court directs the Registry of this Court also to ensure that the name and address of the children in conflict with law are not disclosed or mentioned in the cause lists or elsewhere in the record.

(Sanjeev Kumar)
Judge

JAMMU.
19.02.2024
Vinod.

Whether the order is speaking : Yes
Whether the order is reportable: Yes