
(2008) 07 JH CK 0067
In the Jharkhand High Court

Anand Bishal Kujur

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 02-07-2008

Acts Referred:

Juvenile Justice (Care and Protection of Children) Act, 2000 — Section 12
Penal Code, 1860 (IPC) — Section 201, 302, 34, 376

Citation : (2008) 3 JCR 488

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Judgement

D.G.R. Patnaik, J.—The instant application has been filed against the order dated 07.06.2007 passed by the 1st Additional District and Sessions Judge, Gumla in Criminal Appeal No. 10 of 2007 whereby the order of the Juvenile Justice Board, Ranchi dated 16.12.2006 by which the petitioner's prayer for bail under the provisions of Section 12 of the Juvenile Justice Act has been rejected.

2. The petitioner has been made accused for the offences under Sections 302, 201/34 and 376 of the Indian Penal Code.

3. Counsel for the petitioner submits that the petitioner was remanded to custody in the remand home at Gumla since he was found to be a juvenile on the date of alleged occurrence. His prayer for bail was rejected by the Juvenile Justice Board and thereafter, the petitioner preferred an appeal against the order of the Board before the Sessions court but by the impugned order, the Sessions court also dismissed the petitioner's prayer. It is further submitted that an order was passed by this Court on the last date calling for a report regarding the progress made in the trial of the petitioner during the period of past two and half years. The report has been received which indicates that the progress made in the trial is tardy and slow and even after lapse of such a long period of custody, only three witnesses out of 14, have been examined till date. It is further submitted that the co-accused Xavier Minz, on the basis of whose confessional statement, the name of the petitioner had transpired, is enjoying the privilege of

bail granted to him long ago and the petitioner has been denied the privilege on the grounds which is totally imaginary and misconceived. Learned Counsel adds that the rejection of petitioner's prayer for bail made on the ground that the offence is serious, is infact not tenable as because the provisions of Section 12 of the Juvenile Justice Act, being a special act, lays down that bail should be granted to the juvenile irrespective of the nature of offence, except on certain specific circumstances. It is further submitted that the learned court below has failed to take into consideration that the petitioner's father had offered to take the petitioner into his custody and keep him in proper care and protection under his control.

4. Learned Counsel for the state, on the other hand, opposes the prayer on the ground that the allegations against the petitioner is serious and the petitioner is accused for committing heinous offences, both of murder and rape of the victim and as rightly observed by the learned court below, the release of the petitioner would bring him in association with other known criminals.

5. From perusal of the order of the court below, it appears that the prayer for bail of the petitioner was rejected basically on the ground that the allegations against him are serious and the offence is grave in nature.

6. Though, the court below has observed that the release of the petitioner from custody is likely to bring him in association with other known criminals but there is no basis of such opinion, recorded by the court below. It further appears that the court below has failed to take into consideration the offer made by the petitioner's father that he would maintain the custody of the petitioner and keep him in proper care and protection. It need not be emphasized that the provisions of Section 12 of the Juvenile Justice Act is a special provision under which the benefit of bail can be extended to the juvenile, irrespective of the nature of offence, and the only few exceptions to the rule are that the release of the juvenile is likely to bring him in association with other known criminals and that his release would defeat the ends of justice.

7. In the present case, as mentioned above, there is no sound basis to opine that the petitioner's release would bring him in association with other known criminals. Furthermore, there is no ground to indicate that his release will defeat the ends of justice. On the other hand, the offer made by the petitioner's father with an undertaking that he will take custody and maintain proper care and protection of the boy, is a circumstance which would contradict the opinion that the petitioner's release would bring him in Association with other known criminals.

8. Apart from these factors, it is also observed that the petitioner has been suffering detention since more than two and half years and during this period the trial has not made any significant progress except the examination of three out of 14 charge sheeted witnesses, that too recorded recently in the month of June, 2008. There is no appreciable progress of the trial and at the rate the trial is

progressing, it is not likely that it will conclude in the near future.

9. Regard being had to the facts and circumstances, I find merit in this application and the same is hereby allowed. The petitioner's prayer for his release on bail is accordingly allowed and he is directed to be released on bail on his furnishing bail bond of Rs. 10,000/- (Rupees Ten Thousand), with two sureties of the like amount each to the satisfaction of the Juvenile Justice Board, Ranchi in connection with Dumari P.S. Case No. 1 of 2006 corresponding to G.R. Case No. 4 of 2006 with a condition that the father of the petitioner should give a written undertaking to take custody of the petitioner and maintain proper care and protection of the petitioner under his control.

10. The impugned order of the learned 1st Additional District & Sessions Judge, Gumla as also the impugned order of the Juvenile Justice Board, Ranchi, are hereby set aside.

This revision application is accordingly disposed of.