
(2013) 05 CHH CK 0016
In the Chhattisgarh High Court
Case No : Criminal Revision No. 23 of 2012

Ankit Upadhyaya @ Chotu and Others	APPELLANT
Vs	
State of Chhattisgarh	RESPONDENT

Date of Decision : 10-05-2013

Acts Referred:

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

Citation : (2013) 2 CG.L.R.W. 70 : (2013) 3 CGBCLJ 167 : (2013) 3 CGLJ 328 :
(2013) 3 Crimes 252 : (2013) 4 MPHT 40

Hon'ble Judges : R.S. Sharma, J

Bench : Division Bench

Advocate : Vinay Dubey, for the Appellant; Vinay Harit, Dy. Advocate General,
for the Respondent

Judgement

R.S. Sharma, J.—This Criminal Revision has been preferred by the applicants against order dated 28.12.2011 passed by the Third Additional Sessions Judge, Bilaspur in Criminal Appeal No. 355/2011, dismissing the appeal preferred by the applicants assailing order dated 16.11.2011 passed by Principal Magistrate, Juvenile Justice Board, Bilaspur in Criminal Case No. 220/2011. Case of the prosecution, in brief, is as under:

Between 5.9.2011 at about 5.00 p.m. to 7.9.2011 at about 3.30 p.m., the applicants committed murder of one Iliyas @ Raja near Kori Dam Kota by means of club. Merg intimation No. 94/11 was recorded in Police Station, Kota. After merg investigation, regular FIR No. 297/11 for offence under Sections 302 and 201 read with Section 34 of the Indian Penal Code was registered against the applicants and charge-sheet was filed against the applicants before Juvenile Justice Board, Bilaspur. The applicants filed an application u/s 12 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (henceforth "the Act of 2000") before Principal Magistrate, Juvenile Justice Board, Bilaspur for grant of bail, which was rejected by the Board vide order dated 16.11.2011. Being aggrieved by this order, the applicants preferred appeal before Sessions judge,

Bilaspur. The learned Third Additional Sessions judge, Bilaspur dismissed the appeal by impugned order dated 28.12.2011 on the ground that if the applicants are released on bail, they would be exposed to moral, physical and psychological danger.

2. Learned counsel for the applicants submits that both the Courts below have completely overlooked the provisions of Section 12 of the Act, 2000. He further submits that there is absolutely nothing on the record of the probation officer if the applicants are released on bail, they would be exposed to moral, physical and psychological danger. He further submits that Juvenile Justice Board rejected the application without there being any material or circumstances justifying conclusion that release would defeat the ends of justice.

3. On the other hand, Mr. Vinay Harit, learned Dy. Advocate General appearing for the State submits that while rejecting the application of the applicants, no illegality has been committed by the Juvenile Justice Board.

4. Section 12 of the Act 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-in-charge 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.

5. A bare reading of Section 12 of the Act, 2000 makes it clear that 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 or in any other law for the time being in force, be released on bail with or without surety.

6. What is discernible from the above Section is that a juvenile should be granted bail unless his case falls within one of the exceptions engrafted therein and those

are that 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. Unless the aforesaid rider is satisfied, bail to a juvenile should not be refused. It is significant to note that gravity of offence or its seriousness alone, divorced from above exceptional reasons, has not been taken as a rider by the legislature to deny bail to a juvenile in conflict with law. It is only danger to his moral, physical and psychological qualities and likelihood of his attaching himself with criminals or his release defeating ends of justice that Board or the courts may not exercise discretion in his favour and enlarge him on bail. For such a determination, no hard and fast rule of inflexible nature can be laid down as it depends on facts and circumstances peculiar to each case.

7. In the instant case, in compliance of the provisions of the Act, 2000, report of the probation officer was called, which reads as under:

(Matter in other language)

Applicant No. 1: Ankit Upadhyay @ Chotu

(Matter in other language)

8. A bare perusal of the report, it is nowhere mentioned that if the applicants are released on bail, they would come into association with any known criminal or expose them to moral, physical or psychological danger or that their release would defeat the ends of justice. Rather report says that their release on bail would be in their best interest and make their future better.

9. From the discussion made above, I am of the opinion that both the Courts below erred in not exercising their discretionary power in favour of the applicants and the impugned orders suffer from patent error of law as well as fact and cannot be sustained. Considering the facts and circumstances of the case and the report of the probation officer, the revision is allowed and impugned order passed by the Third Additional Sessions Judge, Bilaspur dated 28.12.2011 and order dated 16.11.2011 passed by Juvenile Justice Board, Bilaspur are hereby set aside. Applicants Ankit Upadhyay @ Chotu, Vikas @ Chotu and Ankit @ Siddharth Malu are directed to be released on bail on their parents/guardians executing a personal bond for Rs. 30,000 with two solvent sureties each in the like amount to the satisfaction of the Juvenile Justice Board, Bilaspur on a condition that they will keep the applicants in their proper care and custody and will report to the Juvenile Justice Board, Bilaspur on all the dates as are given to them.