

(2020) 09 MP CK 0115

In the Madhya Pradesh High Court

Case No : Criminal Revision No. 0752 Of 2020

Dharmendra Minor Through Natural Guardian Mother Rajabai

APPELLANT

Vs

State Of Madhya Pradesh

RESPONDENT

Date of Decision : 10-09-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 161, 164

Juvenile Justice (Care & Protection Of Children) Act, 2015 — Section 12, 12(1), 18, 53, 101

Indian Penal Code, 1860 — Section 190, 195A, 354, 363, 366, 376(d), 376(2)(i), 450, 506

Protection Of Children From Sexual Offences Act, 2012 — Section 3, 4, 5, 6

Citation : (2020) 09 MP CK 0115

Hon'ble Judges : S. K. Awasthi, J

Bench : Single Bench

Advocate : Neeraj Gaur, Dhristi Rawal

Final Decision : Allowed

Judgement

1. The present revision petition, under Section 53 of Juvenile Justice (Care & Protection of Children) Act, 2015 (for brevity 'the Act of 2015') has been directed against order dated 25/01/2020 passed in Cr.A. No.20/2020, by Third Additional Sessions Judge, to the Court of First Additional Sessions Judge, District Rajgarh (Biaora), wherein the order dated 17/01/2020 passed by Principal Magistrate, Juvenile Justice Board, District Rajgarh (Biaora) with respect of Crime No. 364/2019 registered at Police Station Suthaliya, has been affirmed, by which the application filed by the applicant under Section 12 of 'The Act of 2015', seeking his release on bail in for offence under Sections 363, 366, 376(d), 376(2)(i), 506, 354, 190, 195A, 450 of IPC, 1860 and Section 3 /4, 5/6 of Protection of Children from Sexual Offences Act, 2012 has been dismissed.

2. The prosecution story in short is that on 07/12/2019 at about 14.15 pm, the prosecutrix along with her family members went to the Police Station Suthaliya and lodged a report that two months ago, when she was sleeping in porch of her

house, one Mukesh Lodi & the present applicant came there and took her to nearby forest where the present applicant committed rape with her, whereas co-accused Mukesh Lodi was guarding them. Thereafter, on 07/12/2019 at about 9.00 am when the prosecutrix was coming back from hand pump at her village, at the relevant time, co-accused Mukesh & the present applicant came there, with intend to outrage her modesty caught hold of her hand and pressed her breast. On the basis of the aforesaid report, Police registered FIR bearing Crime No.364/2019 for offence punishable under Sections 363, 366, 376(d), 376(2)(i), 506, 354, 190, 195A, 450 of IPC, 1860 and Section 3 /4, 5/6 of Protection of Children from Sexual Offences Act, 2012. The prosecutrix was sent for medical examination. The applicant was arrested and he was also medically examined. During investigation, it was found that the applicant was below the age of 18 years on the date of the incident, therefore, he was produced before the Juvenile Justice Board, District Rajgarh (Biaora) from where he was sent to safety home. After completion of investigation, charge-sheet was filed against the applicant before the Juvenile Justice Board, District Rajgarh, (Biaora).

3. In the present case, the applicant was arrested on 08/12/2019. The mother of the applicant filed an application for bail before the Principal Magistrate, Juvenile Justice Board, District Rajgarh, (Biaora), for taking custody of his son, which was rejected vide order dated 17/01/2020. Being dissatisfied by the said order, she preferred an appeal under Section 101 of 'The Act of 2015' before the Court of Third Additional Sessions Judge, to the Court of First Additional Sessions Judge, District Rajgarh (Biaora) which came to be dismissed vide the impugned judgment and hence this revision petition.

4. Learned counsel for the applicant has submitted that the Courts below has committed error in rejecting the prayer of the applicant for grant of bail. The appellate Court has dismissed the bail of Juvenile by considering the nature of offence and the allegation against the Juvenile, however, it is settled law that the merits of the case is not relevant for considering the bail of the Juvenile. Learned Juvenile Justice Board, rejected the bail stating that if the juvenile is released on bail, it would expose him to moral, physical or psychological danger or otherwise defeat the ends of justice, but the Board has not assigned any reason of this aspect. Thus bail application of the applicant has been dismissed by Courts below without complying with the provisions of law as mentioned in 'the Act, 2015'. Under these circumstances, learned counsel prayed for grant of bail to the applicant.

5. On the other hand learned Public Prosecutor opposed the prayer contending that there is clear allegation of commission of rape in the statement of prosecutrix recorded under Sections 161 and 164 of Cr.P.C, which involves immoral act. The Juvenile Justice Board was of the view that the release of the juvenile is likely to bring that person into association with the known criminal or would expose him to moral, physical or psychological danger or otherwise defeat the ends of justice. Thus Courts below has not committed any illegality in

rejecting the prayer of the applicant. The impugned order passed by learned appellate Court does not appears to be illegal or against the material available on record. Under these circumstances, he prayed for rejection of this revision petition.

6. Considering the contentions raised by both the parties and also perused the order and documents filed by the parties.

7. 'The Act, 2015' has come into force since 12/01/2016. The provisions for bail to the juvenile has been made in Section 12(1) of the aforesaid Act, which 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."

8. From the perusal of the record, it appears that the application for bail of the applicant has been rejected by the Juvenile Justice Board, Rajgarh (Biaora) and on appeal dismissed by the Third Additional Sessions Judge, to the Court of First Additional Sessions Judge, District Rajgarh (Biaora) on the ground that there exist reasonable grounds under the section for believing that the release of the juvenile is likely to bring that person into association with the known criminal or expose the said person to moral, physical or psychological danger or that this release would defeat the ends of justice. However, it can be lost sight of the fact that such provision is indicative of the intend of the legislature that a child conflicted with law should not be kept in custody normally except under the circumstances narrated under the section 18 of 'the Act, 2015'. The report filed by the Probation Officer also suggested that the applicant is not having any criminal background and his tendency is not to indulge in crime and his release would not defeat the ends of justice. Under these circumstances, refusal of bail would be against the intention of 'The Act of 2015'. Therefore, taking into consideration of all the aforesaid facts in the opinion of this Court, "ends of justice" would be served if the applicant be released on bail and sent to custody of his guardian.

9. Accordingly, the present revision petition is allowed and the order dated

17/01/2020 passed by Principal Magistrate, Juvenile Justice Board, District Rajgarh (Biaora) and judgment dated 25/01/2020 passed in Cr.A. No.20/2020, by Third Additional Sessions Judge to the Court of First Additional Sessions Judge, District Rajgarh (Biaora) are hereby set aside and it is directed that the applicant shall be released on bail and handed over to the custody of his father on furnishing a personal bond of Rs.75,000/-(Rupees Seventy five thousand only) with one solvent surety in the like amount to the satisfaction of the Juvenile Justice Board, District Rajgarh (Biaora), subject to the condition that the mother of the juvenile shall keep watch over him during the period of his release and keep him present on each and every dates of appearance before the concerned Juvenile Justice Board and shall not allow the applicant to come into association with any known/unknown criminals and further ensure that his release shall not defeat the ends of justice in any manner. It is further directed that Probation Officer shall periodically keep vigilance over the child conflicted with law and observe his activities and in the event of any diversity noticed by him he shall arrest the child conflicted with law. Eventually, the order granting bail shall stand automatically cancelled in view thereof.

10. Resultantly, this revision petition stands allowed and disposed of in the manner indicated herein-above, thereby setting aside the impugned judgments.

Certified copy as per Rules.