

(2012) 06 J&K CK 0009
In the Jammu And Kashmir High Court
Case No : Criminal Rev. No. 53 of 2011

Iqbal Deep Singh

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 15-06-2012

Acts Referred:

Arms Act, 1959 — Section 25, 4

Jammu And Kashmir Juvenile Justice Act, 1997 — Section 18, 18(1), 24

Citation : (2013) CriLJ 471

Hon'ble Judges : Mohammad Yaqoob Mir, J

Bench : Single Bench

Advocate : P.N. Raina and J.A. Hamal, for the Appellant; Gagan Basotra, AAG, for the Respondent

Judgement

Mohammad Yaqoob Mir, J.—On 30th July, 2011 source information is stated to have been received by Police Station, Gandhi Nagar,

Jammu to the effect that at about quarter to one p.m. near Zeenat Tutorial, Shastri Nagar, Jammu, Amandeep Singh and Jaspreet Singh, in view of

previous enmity, in furtherance of common subject with intention to commit murder of Sukhbir Singh attacked him. Amandeep Singh caught hold

of Sukhbir Singh, whereas Jaspreet Singh with ""kirch"" injured said Sukhbir Singh, who finally succumbed to injuries in the hospital. A case was

registered as Crime No. 185/2011 for commission of offence punishable under Sections 307, 341, 34 Ranbir Panel Code (for short RPC) and

4/25 Arms Act. Investigation of the case culminated in filing charge-sheet (challan) to the effect that three accused persons namely Jaspreet Singh,

Amandeep Singh and Iqbal Deep Singh, during investigation are established to have committed offence punishable under Sections 302, 341, 34

R.P.C. Iqbal Deep Singh was stated to be less than 16 years of age by his parents, therefore, was got medically examined in Government Medical

College, Jammu, and Radiologist opined that his age shall be between 18 to 20 years. On behalf of Iqbal Deep Singh, an application was filed for

grant of bail on the ground of he being a Juvenile. Learned Chief Judicial Magistrate, Jammu vide order dated 7th September, 2011 has concluded

that the accused Iqbal Deep Singh is still to attain the age of 16 years and has recorded that in his considered opinion he is a juvenile.

2. While considering the plea for grant of bail, learned Chief Judicial Magistrate concluded that in the circumstances, grant of bail is declined and

the accused be sent to Children Home ""Bal Ashram"", R. S. Pura. The Superintendent/Manager thereof has been directed to allow the Investigating

Agency to meet the juvenile for the purpose of inquiry. Senior Superintendent of Police was directed to ensure adequate safety/security

arrangement of the accused.

3. Petitioner aggrieved by the second part of the judgment, whereunder grant of bail has been declined, has filed the Cr. Rev. Petition No.

53/2011.

4. During pendency of the said revision Petition, learned Chief Judicial Magistrate vide his order dated 29th September, 2011 has committed the

case to the Court of Sessions Judge, Jammu and accused have been remanded to judicial custody. As against the said order dated 29th

September, 2011, an other Revision Petition i.e. Cr. Rev. No. 62/2011 has been filed.

5. The contention of learned counsel for the petitioner is that since position of the petitioner Iqbal Deep Singh being Juvenile has not been

challenged, therefore, he should have been granted bail. On the other hand, Mr. Basotra learned Additional Advocate General contended that

petitioner is involved in heinous offence, therefore, learned Chief Judicial Magistrate has rightly declined grant of bail. Further added that the

petitioner is not a Juvenile.

6. Considered the rival submissions.

7. Position of the petitioner being Juvenile has not been challenged by the respondent, that apart for determination of the age, Rule 21(5) of the

Jammu and Kashmir Juvenile Justice Rule, 2007 is relevant to be quoted.

21(5).

In every case concerning of juvenile, the Board shall either obtain:--

- (i) a birth certificate given by a corporation or a municipal authority; or
- (ii) a date of birth certificate from the school first attended; or
- (iii) matriculation or equivalent certificate, if available; and
- (iv) in the absence of (i) to (iii) above, the medical opinion by a duly constituted Medical Board, subject to a margin of one year, in deserving cases

for the reasons to be recorded by such Medical Board, regarding his age; and, when passing orders in such case shall, after taking into

consideration such evidence as may be available or the medical opinion, as the case may be record a finding in respect of his age.

8. In the instant case certificate issued by the Cantonment Board as reflected in the order impugned would indicate that the date of birth of the

petitioner in the birth register of the Cantonment Board, Jammu is recorded as 20-11-1995, same date of birth is recorded in Secondary School

Certificate for the year 2010 issued by the State Board of School Education. In terms of above referred Rule, these two documents were enough

for determining the age of the petitioner because position of the said certificates has neither been denied nor challenged. During investigation also

without any reason these two certificates have been ignored and the investigating agency has simply recorded that parents of the accused Iqbal

Deep Singh stated that the age of Iqbal Deep Singh is less than 16 years, based on which, petitioner was got examined in Government Medical

College, Jammu where Radiologist opined that his age must be between 18 to 20 years.

9. The Juvenile Court (Chief Judicial Magistrate) has relied on the above referred two certificates, the validity of which was not challenged,

therefore, has rightly opined that the age of the petitioner at the time of occurrence was less than 16 years. Rule quoted above would provide that

Juvenile Court for determination of the age has to consider the date of birth certificate issued by Corporation or Municipal Authority or school

certificate. In absence of the said certificates, medical opinion of duly constituted Medical Board subject to margin of one year shall be taken into

consideration. But in the instant case, when the certificates are available, the Juvenile Court was right in ignoring the opinion of the Radiologist. The

requirement of the Rule is that in absence of the said certificates, it is only duly constituted Medical Board whose opinion has to be taken into

consideration, therefore, opinion of the Radiologist as obtained by the investigating agency is not also in conformity with the Rules. Otherwise also

(though impermissible) if the opinion of the Radiologist is taken into consideration, even then margin of error of two years on higher side or the

lower side is permissible. In the instant case, the margin of error has to tilt towards lower side because the school certificate and the certificate

issued by the Cantonment Board suggest that age of the petitioner to be less than 16 years, so in any case, position of the petitioner being Juvenile

is firmly established. In the given circumstances, no further enquiry was required to be conducted.

10. Next question which arises for consideration is as to whether decline of concession of bail by the Juvenile Court (Chief Judicial Magistrate) is

in consonance with law; the answer has to be in negative.

11. Section 18 of the Jammu & Kashmir Juvenile Justice Act, 1997 directly deals with the question of bail and custody of juvenile, Section 18(1)

of the Act, is relevant to be quoted herein.

18(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 Juvenile Court, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, Samvat 1989, or in any other

law for the time being in force, be released on bail with or without surety 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 danger or that his release would

defeat the ends of justice.

12. The plain language of sub-section suggests that when a Juvenile is arrested or detained or appears or is brought before Juvenile Court, he has

to be released on bail. The grant of such bail is controlled by later part of said sub-section.

13. Grant of bail in favour of the juvenile has to be refused on any one of the three grounds i.e., if it appears to the Court:--

(a) that there are reasonable grounds for believing that on release the Juvenile is likely to get associated with un-known criminals, or;

(b) release will expose him to moral danger, or;

(c) that his release would defeat the ends of justice.

14. Learned Chief Judicial Magistrate has not recorded any such reason while passing the order refusing grant of bail. No doubt the Court has

jurisdiction to refuse the release and send the Juvenile to an observatory home or place of safety, only when any of the aforesaid condition is

satisfied. Learned Magistrate has simply recorded that investigation is in progress, so in the same background has opined that it shall not be

appropriate to admit the juvenile to bail.

15. The situation has undergone change, investigation has been completed and the charge-sheet (challan) has been presented, therefore, the

Juvenile Court i.e. the Court of Chief Judicial Magistrate afresh is required to consider the grant of bail in favour of the petitioner and while doing

so, shall proceed strictly in accordance with Section 18(1) of the Juvenile Justice Act. Hence, order impugned to the extent it has declined grant of

bail, is set aside. Another order dated 29th September, 2011 whereunder case has been committed to the Court of Sessions is set aside to the

extent, it pertains to the petitioner (juvenile) because in case of juvenile, Section 24 of the Juvenile Justice Act has to be observed, hence the

Juvenile Court (Chief Judicial Magistrate) shall proceed viz-a-viz petitioner (juvenile) in accordance with Section 24 of the Juvenile Justice Act.