

(2014) 07 MP CK 0172
In the Madhya Pradesh High Court
Case No : Cr. R. No. 157/2014

Mukesh Kumar Nanda

APPELLANT

Vs

The State of Madhya Pradesh

RESPONDENT

Date of Decision : 02-07-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397, 401
Juvenile Justice (Care and Protection of Children) Act, 2000 — Section 12, 53
Penal Code, 1860 (IPC) — Section 34, 376(2)(m), 376(d), 506

Citation : (2014) 07 MP CK 0172

Hon'ble Judges : M.K. Mudgal, J

Bench : Single Bench

Advocate : Paritosh Trivedi, Advocate for the Appellant; Ashutosh Tiwari, Panel Lawyer, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

M.K. Mudgal, J.—With the consent of learned counsel for both the parties, the matter is being heard finally at the motion stage.

2. The applicant has filed this criminal revision u/s 53 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as "the Act") read with Section 397/401 of the Code of Criminal Procedure, being aggrieved by the order dated 16/01/2014 passed by the Court of 1st Additional Sessions Judge, Mandla in Criminal Appeal No. 219/2013 confirming the order dated 04/12/2013 passed by the Juvenile Justice Board, Mandla rejecting the application filed by the applicant u/s 12 of the Act whereby the said application filed by the applicant (father of the Juvenile) for taking his son on his supurdagi was rejected.

3. Learned counsel for the applicant submits that both the Courts below have committed error in dismissing the application filed by the father of the juvenile u/s 12 of the Act for taking the Juvenile on supurdagi on the ground of seriousness of crime whereas the said application ought not to have been rejected on this

ground as there were no criminal antecedents of the Juvenile before the Court and there was no evidence on record that if the Juvenile is released on bail, he will come into the association of known criminals. Learned counsel further contends that the report of Probation Officer has been received in this matter. No adverse comment has been made by him against the Juvenile. On the aforesaid grounds learned counsel for applicant prays for giving the Juvenile on supurdagi to his father i.e. applicant.

4. Learned Panel Lawyer opposing the submissions made on behalf of the applicant prays for rejection of the revision.

5. Arguments were heard.

6. As per prosecution story, on 2/12/2013 brother of the prosecutrix Kanhaiya Nanda made a report that the prosecutrix aged 15 years was carrying pregnancy of about seven months and alleged against the Juvenile and another co-accused- Kapil Dev that they committed sexual intercourse with her during summer season. On the basis of the aforesaid report, offence under Sections 376(2)(m), 376(d), 506 read with Section 34 of IPC was registered.

7. On perusal of both the orders, it is clear that the application filed by the applicant for taking the Juvenile on his supurdagi u/s 12 of the Act was rejected on the ground of seriousness of crime. The said findings are erroneous as Section 12 of the Act deals with such power of Board or Courts which reads as under:

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 incharge 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.

8. On bare reading of the aforesaid provisions, it is amply clear that the Juvenile in conflict with law should normally be granted bail unless his case falls within one of the exceptions engrafted thereunder and those exceptions are that there

appear reasonable grounds for believing that his 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 otherwise defeat the ends of justice. In the case of Raj Kumar Vs. State of M.P., 2008 (1) MPWN 94, it has been held that the bail application cannot be rejected on the ground of seriousness of crime. In the instant case, there was no ground of believing that the Juvenile will come into association of known criminals. Similar view was adopted in the case of Rahul Mishra Vs. State of M.P., .

9. Considering the aforesaid facts and circumstances of the case and the fact that Mukesh Kumar Nanda is a Juvenile, hence he should not be denied bail. The revision petition is allowed and the impugned order is set aside and it is ordered that on production of supurdginama of Rs. 25,000/- (Rs. Twenty five thousand only) along with surety of the same amount by his father Mihilal Nanda to the satisfaction of Juvenile Court for appearance of the juvenile before the Juvenile Court or any other Court, the applicant-Mukesh Kumar Nanda be released on supurdagi to his father Mihilal Nanda. Thus, the revision is disposed of.

10. Certified copy as per rules.