
(2007) 07 DEL CK 0173

In the Delhi High Court

Case No : Criminal Revision No. 408 of 2007

Sandeep (in J.C.)

APPELLANT

Vs

The State NCT of Delhi

RESPONDENT

Date of Decision : 30-07-2007

Acts Referred:

Juvenile Justice (Care and Protection of Children) Act, 2000 — Section 12, 12(1)

Citation : (2007) 3 ILR Delhi 190

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : K.K. Manan, Gaurav Goswami and Rishikesh Chaudhary, for the Appellant; Pawan Sharma, APP, for the Respondent

Final Decision : Allowed

Judgement

S. Ravindra Bhat, J.—This revision is directed against an order of the Additional Sessions Judge dated 13-6-2007, which had rejected the appeal preferred by the revisionist against the order of the Juvenile Justice Board, declining bail to him.

2. According to the prosecution, the petitioner was involved in an incident, where his maternal uncle, Bijender was murdered. The prosecution alleged that the deceased resented a relationship alleged to have been existing between his wife, and the present petitioner, his nephew (sister's son), who lived with him. It was alleged that the petitioner entered into a conspiracy with one Puran along with the deceased's wife; pursuant to their designs, Bijender was killed.

3. The grounds which impressed the courts below to decline bail, were that the petitioner lacked parental supervision, since he had lost his father at a young age; his grandparents could not control him. It apprehended that he would be able to influence the material witnesses.

4. Learned Counsel urged that the petitioner was not even named in the first information report; he was implicated much later. The final report has already been filed; the petitioner has suffered incarceration for nearly two years, since

26-8-2005. The courts were not justified in declining bail, as none of the grounds mentioned in the orders fell within the exceptions u/s 12 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as "the Act").

5. The petition was opposed by the learned APP, who submitted that even though Section 12 mandates that bail is to be ordinarily given, there are three well recognized exceptions and the present case falls within those. It was submitted that the role of the petitioner was clear, and his involvement, undeniable. Therefore, it would be in the interests of justice not to enlarge him on bail.

6. Section 12 of the Act reads as follows:

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 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.

7. The court, in Mohd. Feroz @ Bhola v. State 2005 (3) JCC 1313 held that Section 12 mandates one to be released where the person is apparently a juvenile, unless, there are reasonable grounds for believing that such 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. The question of bail, it was held, was not a question of mercy so far as the said provision was concerned. It was mandatory requirement; it stipulates that such a person, who is apparently a juvenile, "shall be released on bail". Shashi Kumar Saini v. The State 2005 VI AD Del 200, is a case where the court granted bail to the juvenile after considering the Social Investigation Report. In Master Niku Chaubey v. State 2006 (2) JCC 720; this Court ruled that the nature of the offence is not a consideration for grant of bail, to the juvenile. The only considerations are those spelt out by Section 12, which requires bail to be granted unless the court feels that the release of the juvenile is likely to bring him into association of any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice. It has

been also held that seriousness of the allegations or gravity of the charges are not relevant in the case of a juvenile accused's request for bail.

8. I have carefully examined the original records. No doubt, charges have been framed in this case. The Social Investigation Report has analysed that the petitioner lacked parental supervision, and his grandparents could not exercise control over him. Now these may be causes for objectionable behavior, or indeed delinquency. But the manner in which this report has been construed by the courts below is disquieting. The courts have not applied their minds as to whether release of the petitioner would expose him to physical or psychological danger, or bring him into association with a known criminal. Sans those considerations, the fall back upon the ubiquitous "interests of justice" clause was a mechanical exercise. While examining a bail application, gravity of the offence is not a predominant criteria.

9. I am satisfied, on the basis of materials available on record, that the petitioner is entitled to grant of bail, u/s 12. Accordingly, the orders of the court below are hereby set aside. The petitioner is hereby enlarged on bail, subject to his near relative furnishing a personal bond in the sum of Rs. 30,000/- and one surety of the same amount to the satisfaction of the Juvenile Justice Board. The petitioner shall maintain good conduct, for the duration of trial; he shall also report once every two months to the Board, in addition to attending the trial on the various dates fixed in that regard. The IO shall also supervise the petitioner, and report in that regard to the Board once every two months.

10. The petition is allowed, subject to the above terms. Order dusty.