

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

HON'BLE SHRI JUSTICE DINESH KUMAR PALIWAL

ON THE 28th OF MAY, 2024

CRIMINAL REVISION NO.1300/2024

BETWEEN:-

CHILD UNDER CONFLICT WITH LAW

.....APPLICANT

(BY SHRI AHADULLA USMANI - ADVOCATE)

AND

**THE STATE OF MADHYA PRADESH
THROUGH POLICE STATION DAMUA
DISTRICT CHHINDWARA (MADHYA
PRADESH)**

...RESPONDENT

(BY SMT. PAPIYA GHOSH – PANEL LAWYER)

This revision coming on for admission this day, the court passed the following:

ORDER

This Criminal Revision has been filed under Section 102 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as "J.J. Act") against the appeal judgment dated 09.02.2024 passed by Sessions Judge, Chhindwara in Criminal Appeal No.17/2024

arising out of Crime No.283/2023 of P.S. Damua, District Chhindwara for commission of offences under section 201, 302, 363, 364-A, 384, 120-B, 34 of Indian Penal Code whereby appeal has been dismissed and the order dated 29.01.2024, passed by the Principal Magistrate Juvenile Justice Board, Chhindwara rejecting the bail application of child in conflict with law has been affirmed.

2. As per prosecution story, on 22.10.2023, Hiraram Yadav lodged an FIR stating that he is an employee in Tansi WCL Mines and is blessed with two sons and one daughter. Deepak Yadav is his youngest son who is student of Class-XI. On 20.10.2023, at around 5:30 P.M. he on the pretext of watching program at Hanuman Mandir left the home, but did not come back. Despite search and enquiry from the friends and family members he could not be traced. He is 17 years old. He is 5 feet 5 inches long with fair complexion. He is wearing cream colour T Shirt, black color half lower and black color slippers. He has with him his friend's mobile sim No.9691815748. An FIR for commission of offence under Section 363 of IPC was registered. The juvenile along with one other was taken into custody and on the basis of disclosure by him at around 6:00 P.M. dead body of Deepak Yadav was recovered from Kuttiya Pahadi, Tansi, Rampur. In investigation, it was revealed that juvenile along with co-accused had kidnapped the deceased for ransom of Rs.20 Lakh (Rupees Twenty Lac). They, by sending message on phone of father of deceased boy had demanded Rs.20.00 lakh as ransom. As demand was not fulfilled, the juvenile murdered the deceased and hid his dead body inside the stones of a stream in Kuttiya Pahadi. In postmortem report, number of antemortem

injuries were found on the person of the deceased and cause of his death was hemorrhage shock caused due to head injury by hard and blunt object. Charge sheet was filed against the co-accused. As child in conflict with law was found to be a juvenile, charge sheet against him was filed before the Juvenile Justice Board. He was found to be 16 years and 1 month old in age. The Social Investigation report was called, wherein it was observed by the Probationary Officer that the child in conflict with law is in habit of drinking liquor and is also in habit of smoking and his mentality is dangerous. His father is an illiterate person and is working in WCL. He is 9th fail and has left the school two years back and is in bad company.

3. An application for bail to the juvenile under Section 12 of the Act was filed before the Juvenile Justice Board but same was declined. Thereafter, an appeal preferred on behalf of the juvenile was also dismissed. Learned Sessions Judge has taken into account the facts that his release is likely to bring him into association with known criminal, expose him to moral, physical or psychological danger and would defeat the ends of justice.

4. Learned counsel for the applicant has submitted that at the time of commission of offence juvenile was 16 years and 1 month old. He has no criminal antecedent. He has been falsely implicated without any material evidence. It is further submitted that juvenile was compelled to confess the offence by giving beating while in custody. It is further submitted that there is no evidence on record that if the juvenile is released on bail, his release is likely to bring him into association with any known criminal, expose him to moral, physical or psychological danger and would defeat the ends of justice. No such findings has been recorded as to how he will come into

association with any known criminal, or how it will expose him to moral, physical or psychological danger and would defeat the ends of justice. His father is ready to give an undertaking that if juvenile is released on bail he will keep him in his custody and will look after him properly. It has been further submitted that Juvenile Justice Board as well as appellate Court have not properly appreciated the facts of the case and have passed the impugned order in a cursory manner without considering the object of the law enacted for the benefit of juvenile and have refused to release him on bail

5. On the other hand, learned Panel Lawyer for the State has supported the impugned judgment and order passed by the Juvenile Justice Board and appellate Court and has contended that that the juvenile has committed a heinous offence in a pre-planned manner as after kidnapping the boy he demanded the ransom by sending message on the mobile phone of the father of the deceased from the same mobile which was with the deceased. It is further submitted that the dead body of the deceased minor boy has been seized on the basis of disclosure of the fact by the juvenile in conflict with law. He has murdered the minor boy only because father of the deceased could not manage the ransom of Rs.20.00 lac. This all shows his depravity of mind. Therefore, he has prayed that considering the gravity of offence and Social Investigation Report filed by the Probationary Officer the criminal revision filed on behalf of the juvenile be dismissed.

6. I have heard the rival submissions put forth by learned counsel for the parties.

7. It is undisputed that at the time of commission of offence juvenile in conflict with law was 16 years and 1 month old. Learned Juvenile Justice

Board and learned Sessions have taken into consideration the ghastly and abominable crime committed by the juvenile. They have also taken note of the report of the Probationary Officer.

8. It is true that gravity of the offence alone cannot be a ground to reject the bail application but where a helpless child of 16 years age is murdered only because father failed to pay ransom, the depravity of mind of the juvenile is very much manifest. Before considering the legality, propriety, correctness and validity of the order passed by the Courts below. It would be useful to look at the relevant provision of the Act. Section 12 of Juvenile Justice (Care and Protection of Children) Act, 2015 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.

(2) When such person having been apprehended is not released on bail under sub-section (1) by the officer-in-charge of the police station, such officer shall cause the person to be kept only in an observation home in such manner as may be prescribed until the person can be brought before a Board.

(3) When such person is not released on bail under sub-section (1) by the Board, it shall make an order sending him to an observation home or a place of safety, as the case may be, for such period during the pendency of the inquiry regarding the person, as may be specified in the order.

(4) When a child in conflict with law is unable to fulfill the conditions of bail order within seven days of the bail order, such child shall be produced before the Board for modification of the conditions of bail."

9. Provisions of Section 12 of "J.J. Act, 2015" manifest that ordinarily, the Juvenile Justice Board is under obligation to release the juvenile on bail with or without surety. The juvenile shall not be released in certain circumstances as the latter part of the section also uses the word 'shall' imposing certain mandatory conditions prohibiting the release of the juvenile by the J.J. Board. If there are any reasonable grounds for believing; (a) that the release is likely to bring him into association with any known criminal; (b) that release is likely to expose him to moral, physical, or psychological danger and (c) that release of the juvenile in conflict with law would defeat the ends of justice.

10. From a bare reading of the provisions of Section 12 of "J.J. Act,

2015", it appears that the intention of the legislature is to grant bail to the juvenile irrespective of the nature or gravity of the offence alleged to have been committed by the juvenile, and bail can be declined only in such cases where there are reasonable grounds to believe that the release is likely to bring the juvenile into an association of any known criminal or expose him to moral, physical, or psychological danger, or that his release would defeat the ends of justice. The gravity of the offence is not a relevant consideration for declining the bail to the juvenile. A juvenile can be denied the concession of bail if any of the three contingencies specified under Section 12(1) of "J.J. Act, 2015" is available.

11. On a bare perusal of the provisions, it is apparent that bail to juvenile is not "must" in all cases as it can be denied by assigning proper reasons. The law does not say that once a person is found juvenile, he should be released on bail notwithstanding the other facts and circumstances of the matter. It is also explicit that the bail can also be denied if the juvenile's release, in the opinion of the court, would defeat the ends of justice. The phrase "ends of justice" is undoubtedly a meaningful phrase bringing within its sweep many factors including the nature of the crime and the merits of the matter. Normally, in a case of juvenile, the gravity of the offence or nature of accusation are not so material. However, there may be some other facts and circumstances which cannot simply be brushed aside by the court. As far as nature of the offence is concerned, the Act itself differentiates between offences falling into three categories, i.e petty, serious and heinous offences. Time and again, the Supreme Court has cautioned the courts through various judgments to be more sensitive while dealing the matter of

heinous offences. However, the general principles as enumerated in Section 3 of the Juvenile Justice Act, 2015 have to be kept in mind as a guiding factor. On one hand, all decisions regarding the child should be based on primary consideration of best interest of the child, on the other hand, the demands of justice of the other side cannot be simply shrugged off. In fact, Society has always been sensitive towards offences against the innocent children. Therefore, while considering the prayer for bail in cases related to kidnapping for ransom and murder of abducted boy the Court has to see whether release would not expose juvenile to the danger of retribution by the Society. In cases of murder of the minor child, such a possibility always exists. Where victim is a child, the court would do well in its limit to refuse to exercise discretion vested under Section 12 of the Act and bail can also be refused on the ground that release would defeat the ends of justice.

12. The Hon'ble Apex Court in the case of *Om Prakash Vs. State of Rajasthan and another [(2012) 5 SCC 201]*, has cautioned the courts to be more sensitive in dealing with juvenile in cases of serious nature like sexual molestation, rape, gang-rape murder etc. Relevant extract of the judgment made in Paras- 23 and 38 are being reproduced below for reference:-

"23. Hence, while the courts must be sensitive in dealing with the juvenile who is involved in cases of serious nature like sexual molestation, rape, gang rape, murder and host of other offences, the accused cannot be allowed to abuse the statutory protection by attempting to prove himself as a minor"

In para-38 of the judgment, Hon'ble Court observed that this would clearly be treated as an effort to weaken the justice dispensation system. Para-38 of the judgment is being reproduced below:-

"38. The Juvenile Justice Act which is certainly meant to treat a

child accused with care and sensitivity offering him a chance to reform and settle into the mainstream of society, the same cannot be allowed to be used as a ploy to dupe the course of justice while conducting trial and treatment of heinous offences. This would clearly be treated as an effort to weaken the justice dispensation system and hence cannot be encouraged."

In para-33 of the judgment, Court observed that 'statutory protection of the Juvenile Justice Act is meant for minors who are innocent law-breakers and not accused of matured mind who use the plea of minority as a ploy or shield to protect himself from the sentence of the offence committed by him, otherwise would amount to subverting the course of justice'.

13. The murder of a helpless and innocent child shows the depravity of the mind of the person committing such offence. The kidnapping of a child for ransom and in absence of receipt of ransom murder of kidnapped child cannot be treated to be an act, which can be dubbed as a child's mistake committed during youth or adolescence. It is an act motivated with passion to obtain heavy ransom from the father or family members of the deceased child. Where a 16 years old boy was abducted for a ransom of Rs.20.00 lac and for realization of ransom the mobile of the deceased boy was used by sending messages on the phone of father of the deceased threatening him to pay the same and not to inform police and when he failed to get the ransom then the murder of child by him shows the cruel mentality of the juvenile in conflict with law. While considering bail to a juvenile in conflict with law, gravity of offence cannot be considered but at the same time it cannot be overlooked that discretion of bail to such a person will obviously tantamount subverting the course of justice.

14. The murder of a 16 year old child who was abducted for ransom reflects the criminal mind set of the offender. Granting bail to such a juvenile will not only expose him to moral, physical or psychological danger but will also lead to defend the ends of justice. The object of Juvenile Justice Act is not only reformatory but is retributive also to some extent. While dealing with grant or refusal of bail the ends of justice compel the Court to strike a balance between conflicting demands of justice of both the sides i.e. the accused and the victim. The aim and object of the Juvenile Justice Act, 2015 is to achieve not only the welfare and betterment of juvenile by extending to him services of reformatory nature, so that he can be brought back to main stream of society as a person of healthy mind, but also to address the concern of society at large.

15. After all victim, a child also needs justice. The Juvenile Justice Act has been enacted for the need and care of juveniles. Therefore, a striking balances is necessary while considering the matter of bail of a juvenile from the angle of best interest of the child, demands of justice to the victim and the concern of the society at large. Offences of murder, rape/aggravated penetrative sexual assault are crime against society and society feeling desperate and outrage too needs a justice. Thus, justice has to be ensured to both authors vis-a-vis victim and society. Section 12 of the Act while empowers Court to grant bail to juvenile but the act also puts a rider which is caused in negative.

16. In this case, a 16 years old minor boy was abducted for ransom and when ransom was not paid he was murdered. The juvenile in conflict with

law himself forwarded messages from the mobile phone of the deceased to his father and demanded ransom of Rs.20.00 lac. Dead body of the deceased child has been recovered on the basis of disclosure of the facts by the juvenile in conflict with law. As per Social Investigation Report, juvenile is in habit of consuming liquor. He is also used of drugs and smoking. He has deprave and malign mentality. Therefore, I am of the view that aim of the Juvenile Justice Act is to take care of both child in conflict with law as well as the society. As such, Section 12 of the Act cannot be interpreted in a manner so as to give advantage to only juvenile in conflict with law ignoring the concern of the society. The provisions of bail for juvenile cannot be interpreted to work only for the benefit of the juvenile ignoring the cries of the family of the deceased child. Whenever child becomes victim of offences, let alone heinous offence like rape/aggravated penetrative sexual assault, murder, society craves and cries for justice. By showing misplaced sympathy to a juvenile, who kidnapped a minor child for ransom and later on murdered him due to non payment of desired ransom the society is denied justice which is not and cannot be intention of law.

17. In view of above, juvenile in conflict with law is not entitled to bail for commission of aforesaid offence. Consequently, I am of the view that learned Sessions Judge has not committed any error in rejecting the appeal and in affirming the order passed by Juvenile Justice Board.

18. In view of the discussion made herein above, I do not find any error in the impugned order. Consequently, this criminal revision is accordingly

dismissed. However, the Juvenile Justice Board, Chhindwara is directed to expedite the hearing of the case and conclude the case at the earliest.

(DINESH KUMAR PALIWAL)
JUDGE

Jasleen