

CRR.3498/2017.
(Satyam alias Shital Kushwah Vs. State of M.P) .

Gwalior, Dated : 28/11/17

Shri Pooran Kulshreshtha with Shri B.S. Shrivastava, learned counsel, for the applicant.

Shri Shiraz Quraishi, learned Public Prosecutor, for the respondent/State.

With the consent of learned counsel for the parties, the matter is heard finally at the motion stage and the following order is passed :-

ORDER.

1. Juvenile applicant Styam alias Shital through his mother Maya Devi has filed this revision under Section 102 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short "the Act") against the judgment dated 20.11.2017 passed by the Special Judge under POCSO Act at Morena in Criminal Appeal No.200 of 2017 cause title Satyam alias Shital Vs. State of M.P through P.S. Ambah district Morena rejecting his appeal and affirming the order dated 16.11.2017 passed by the Juvenile Justice Board, Morena (for short the J.J. Board) in Criminal Case No.312 of 2017 rejecting the bail application of the applicant under Section 12 of the Act arising out of Crime No.615 of 2017 registered at Police Station Ambah against him for the offences punishable under Sections 341 and 354 of the I.P.C and 11(iv) r.w 12 of the POCSO Act.

CRR.3498/2017.
(Satyam alias Shital Kushwah Vs. State of M.P) .

2. Intrinsic facts for the purpose of this revision are as follows:-

(2.1) On 30.7.2017 at about 11.10 a.m, the victim girl-complainant aged about 13 years accompanied by her father Sanjay and uncle Nitin lodged an oral FIR at Police Station Ambah stating that she is a resident of Ambah town and that she is a student of 9th class. Applicant Satyam had been stalking and making sexual advances at her for the last 2 to 3 months whenever she goes to school. He used to say her to talk to him so that he would feel good. On 30.10.2017 at about 6.30 p.m when she was on the way in Ambah town, the applicant stopped her, caught her hands with sexual intent and thrust a letter in her hands asking her to read it later. He also threatened her that if she reports the matter to the police, then he would harm her physically. Upon her oral report, the police recorded the F.I.R and registered a case at Crime No.615 of 2017 against the applicant for the offences punishable under Sections 341 and 354 I.P.C and 11 (iv) r.w 12 POCSO Act. After the completion of the investigation, the police filed the charge-sheet before the J.J.Board Morena. Thereupon, a Criminal Case No.312 of 2017 came to be registered, which is pending for trial.

(2.2) On behalf of the applicant a bail application under Section 12 of the Act was moved before the J.J.

CRR.3498/2017.
(Satyam alias Shital Kushwah Vs. State of M.P) .

Board Morena, which was dismissed vide order dated 16.11.2017. Feeling aggrieved thereby, an appeal was filed which was also dismissed by the learned appellate Judge vide the impugned judgment dated 20.11.2017.

(2.3) Hence, this revision.

3. Learned counsel for the applicant submits that both the J.J.Board and the appellate Judge had not decided the applicant's bail application taking into consideration the provisions of Section 12 of the Act in true perspective. On the other hand, the bail applications were decided on the conjectures and surmises that if the applicant is released on bail, then he would come into contact with the persons of criminal background which would expose him to moral, physical or psychological danger. He submits that the applicant is a student of first year of graduation course and his date of birth is 22.5.2002. He submits that the applicant has no criminal antecedents and that if he remains in observation home for long, then his education will be badly suffered. He submits that the applicant's mother would in future take proper care of him and that she would see that he would not come in the contact of any person of criminal mindset. Upon these submissions, he prays to allow the revision setting-aside the impugned judgment.

CRR.3498/2017.
(Satyam alias Shital Kushwah Vs. State of M.P) .

4. Per contra learned public prosecutor supported the impugned judgment of rejection of grant of bail to the applicant.

5. It shall be relevant and useful to refer to first the provisions of Section 12 of the Act, which provides for the release of a juvenile, who is in conflict with law, on bail during the pendency of a case against him before the J.J.Board. The provisions read thus:-

“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 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”.

6. From the perusal of the said provision, it appears that the language employed in enacting the above provisions is plain, clear and unambiguous, hence, there is no difficulty in understanding the intent of the

CRR.3498/2017.
(Satyam alias Shital Kushwah Vs. State of M.P) .

legislature behind it. The following propositions may be culled out on perusal of the Section:-

(i) That, the provisions are independent of general provisions of bail enshrined in Sections 437 and 439 of the Cr.P.C.

(ii) That, the factors such as, heinousness, seriousness, severity and gravity of offence (s) are no grounds for rejection of bail.

(iii) That the bail of a juvenile can only be rejected on the grounds, namely,

(a)- If reasonable grounds appear for believing that the release of a juvenile is likely to bring him into association with any known criminal. The purport of the expression reasonable grounds is that the grounds must be based on some sorts of evidence/facts and mere apprehension of the concerned Court is not enough. Or

(b) Expose him to moral, physical and psychological danger.

The conditions mentioned in **(a) and (b)** are in the interest and welfare of a juvenile. Hence, these two conditions must be considered in favour of a juvenile at the time of dealing with the bail application. Or

(c) That his release would defeat the ends of justice. This expression does not relate even obliquely to the seriousness or heinousness of the crime. The tenor of the expression in the context

CRR.3498/2017.
(Satyam alias Shital Kushwah Vs. State of M.P) .

of the Section must be confined to the point that how far it will be the possibility to bring a juvenile to the justice if he is released on bail. In case he goes absconding, then the ends of justice will be certainly defeated otherwise not.

7. Thus, it is a mandate of the Section that the relief of bail can be denied to a juvenile only when any one of the above mentioned conditions goes against him otherwise he is entitled to to be released on bail.

8. From the perusal of impugned judgment and material on record, I find that the applicant has no criminal antecedents, his date of birth is 22.5.2002 and he is pursuing the study of first year of his graduation course. Both the J.J.Board and the appellate court denied bail to the applicant merely on the ground that if the applicant would be released on bail, then he may be exposed to moral, physical and psychological danger but the said apprehension is not based on any tangible evidence on record. Thus, they denied bail to the applicant on mere conjectures and surmises. As per the FIR, the allegations levelled against the applicant are trivial and simple. Therefore, his detention under observation home during the pendency of the case before the J.J.Board is not required. In that view of the matter, I am of the considered view that the applicant deserves to be enlarged on bail during the trial of the case.

CRR.3498/2017.
(Satyam alias Shital Kushwah Vs. State of M.P) .

9. In view of the above discussion, this revision is allowed. The impugned judgment dated 20.11.2017 passed by learned appellate Judge and order dated 16.11.2017 passed by learned J.J.Board are hereby set aside. The J.J.Board Morena is ordered to release the applicant on bail upon furnishing a supurdiginama by the applicant's mother Maya Devi in the sum of **Rs.30,000/- (rupees thirty thousand only)** with one solvent surety of the same amount to its satisfaction for his appearance before it during trial of the case.

10. It is further directed that it shall be duty of the supurdigigar Maya Devi to keep the applicant present before the J.J.Board Morena as and when his presence is required. She shall take proper care that the applicant does not come into the contact of any person of criminal background or mindset.

11. Let a copy of this order be sent without delay to the J.J.Board Morena for information and compliance.

12. Accordingly, this criminal revision is disposed of.

(Rajendra Mahajan)
Judge