

HIGH COURT OF MADHYA PRADESH : BENCH AT INDORE**S.B.: Hon'ble Shri Justice Subodh Abhyankar****Criminal Revision No.853/2021**

(Sunil s/o Budiya Parmar (Juvenile)
through guardian (Father)
Budiya s/o Kidiya Parmar
Versus
The State of Madhya Pradesh)

(Case was heard on 15.06.2021)

- Counsel for the Parties** : Mr. Vikas Rathi, learned counsel for the petitioner.
Ms. Poorva Mahajan, learned Panel Lawyer for the respondent / State of Madhya Pradesh.
- Whether approved for reporting** : Yes
- Law laid down** : Merely if the offence is said to be committed in ignorance by the accused/juvenile or negligence on the part of the parents of the juvenile, it cannot be a reason to grant bail under Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015.
The present law to deal with such cases is totally inadequate and ill equipped.
- Decision Relied upon:-**
Mukesh v. State NCT of Delhi
reported as (2017) 6 SCC 1.
- Significant paragraph numbers** : 8 to 12 and 14.

ORDER

(Case was heard on 15.06.2021)

Post for

25.06.2021

(Subodh Abhyankar)
Judge

High Court of Madhya Pradesh, Jabalpur
Bench at Indore

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Mr. Vikas Rathi, learned counsel for the petitioner.
Ms. Poorva Mahajan, learned Panel Lawyer for the respondent / State of
Madhya Pradesh.

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ORDER

(Passed on this 25th day of June, 2021)

This is criminal revision filed by the petitioner under Section 102 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (herein after referred to as the “Act of 2015”) against order dated 02.03.2021 passed in Criminal Appeal No.26/2021 by the Sessions Judge, Jhabua, District Jhabua (MP), whereby the appellate Court has dismissed the appeal of the petitioner and confirmed the order dated 02.02.2021 passed in Juvenile Inquiry Case No.36/2021 (Crime No.59/2021) by Principal Magistrate, Juvenile Justice Board, Jhabua, District Jhabua (MP) wherein the petitioner’s application under Section 12 of the Act of 2015 for grant of bail in Crime No.59/2021 registered at Police Station, Jhabua District Jhabua (MP) for commission of offence under Sections 342, 376 (2) (n), 506 and 376 (a) (b) of the Indian Penal Code, 1860 and also under Section 5 (m) read with Section 6 of

the Protection of Children from Sexual Offence Act, 2012, has been rejected.

2. The allegation against the petitioner is that he is aged around 15 years old and on 16.01.2021 at around 10.30 AM (in the morning) he committed rape of a minor girl aged around 10-11 years old whereby she was left bleeding for a prolonged period of time. In her statement to the Police, she has also stated that around three days earlier also, the petitioner had committed rape on her. The petitioner is presently lodged in Child Welfare Home, Jhabua.

3. Counsel for the petitioner has submitted that the Courts below have erred in not allowing the petitioner's application filed under Section 12 of the Act of 2015 and not releasing him on bail. The counsel has also relied upon certain judgments of this Court in the case of **Satyam v. State of MP** reported as **2018 (1) Cr.L.R. MP 51**, **Girraj v. State of MP** reported as **(2006) 3 MPLJ 325**, **Mayur v. State of MP** reported as **2016 SCC Online MP 7285** and **Nishruddin v. State of MP** reported as **2016 SCC Online MP 1109**.

4. Counsel has further submitted that the Courts have erred in not considering the fact that none of ingredients of the proviso to Section 12 of the Act of 2015 are satisfied in the present case, as there is no evidence or material on record that if the petitioner is released on bail, he is likely to come in contact with known criminal or in the event of his

release, he would expose himself to moral, psychological or physical danger; and his release on bail, would defeat the ends of justice.

5. Counsel has further submitted that even the Probationary Officer whose report is on record before this Court, has given a favourable opinion in favour of the petitioner. Thus, it is submitted that the petition be allowed and the petitioner be released on bail.

6. Counsel for the respondent / State, on the other hand, has opposed the prayer and it is submitted that looking to the grievousness of the petitioner's offence, as he is charged under Section 376 of IPC, thus, it is submitted that the petition be dismissed.

7. Heard counsel for the parties and perused the record as also the case diary.

8. From the record, this Court finds that so far as the age of the petitioner is concerned, he is said to be 15 years whereas the prosecutrix in the present case was born on 14.09.2010 whereas the incident took place on 16.01.2021 and thus, the age of the prosecutrix at the time of incident was 10 years 4 months and 2 days to be precise.

9. Case diary also reveals that the prosecutrix has in her statement recorded under Section 161 of Cr.P.C. also alleged that the petitioner had also raped her around three days ago and had also threatened her of dire consequences if she disclosed the incident to any person.

10. Her *MLC* reveals that she was initially treated at District Hospital, Jhabua on 16.01.2021, wherein it is noted that she was bleeding

from her vagina since afternoon and had changed 5-6 pads since then. This report is timed at 09.00 PM (in the night) and after her blood transfusion in the Hospital at Jhabua, she was transferred to MY Hospital, Indore for further treatment, from where she was discharged on 21.01.2021. In MY Hospital, her exploration and repair of posterior vaginal wall operation was also performed.

11. So far as the report of the Probationary Officer is concerned, which is said to be favourable to the petitioner, it is found that according to the Probationary Officer, the offence was committed on account of the negligence on the part of the parents of the petitioner and also due to ignorance.

12. On due appreciation of the aforesaid documents placed on record, this Court does not find it to be a fit case to exercise its discretion to release the petitioner on bail. The petitioner, though aged 15 years only, has committed a heinous offence of rape on a minor girl aged around 10 years and 4 months, which left her bleeding so profusely that her blood transfusion was also required and as per her statement, the petitioner also committed the same act around 3 days ago as well. The conduct of the petitioner clearly reveals that he committed the aforesaid offence with full consciousness and it cannot be said that it was committed in ignorance. This Court is unable to agree with the observation made by the Probationary Officer that an offence of rape can be committed due to ignorance. An offence of rape, being carnal in na-

ture, cannot be committed unless a person has the specific knowledge of the same. In such circumstances, in the considered opinion of this Court, if the petitioner is again left to the care of his parents, considering their earlier negligence to harness him, it cannot be said that the girls of tender age around him would be safe and secure especially when he is enjoying the protection of Juvenile Justice Act. Thus, his release, in the considered opinion of this court, would defeat the ends of justice.

13. As a result, the petition being devoid of merits is hereby dismissed.

14. As a parting note, this Court is also at pains to observe that the Legislature has still not learnt any lesson from the case of Nirbhaya which is reported as **(2017) 6 SCC 1 (Mukesh v. State NCT of Delhi)** as the age of a child is still kept below 16 years in heinous offences under s.15 of the Act of 2015 giving a free hand to the delinquents under the age of 16 years to commit heinous offences. Thus, apparently, despite committing a heinous offence, the petitioner would be tried as a juvenile only, because he is less than 16 years old as provided under Section 15 Act of 2015. Apparently, the present law to deal with such cases is totally inadequate and ill equipped and this Court really wonders as to how many more Nirbhayas' sacrifice would be required to shake the conscious of the lawmakers of this Country.

15. Let a copy of this order be sent to the Law Secretary, Department of Legal Affairs, Government of India, New Delhi (India).

(Subodh Abhyankar)
Judge