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

**BEFORE
HON'BLE SHRI JUSTICE VIJAY KUMAR SHUKLA**

ON THE 21st OF MARCH, 2023

CRIMINAL REVISION No. 755 of 2023

BETWEEN:-

**MAHESH RAO S/O RAMESHWAR (GUARDIAN FOR
JUVENILE OFFENDER KRISH RAO S/O MAHESH RAO),
AGED ABOUT 42 YEARS, OCCUPATION:
AGRICULTURIST R/O VILLAGE KATAKIYA, TEHSIL
MANDSAUR, DISTRICT MANDSAUR (MADHYA
PRADESH)**

.....PETITIONER

(BY SHRI ABHAY SARASWAT - ADVOCATE)

AND

**THE STATE OF MADHYA PRADESH STATION HOUSE
OFFICER THROUGH POLICE STATION DALODA,
DISTRICT MANDSAUR (MADHYA PRADESH)**

.....RESPONDENT

(BY SHRI SUDHANSHU VYAS - P.L)

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

ORDER

The present Revision is filed under Section 102 of Juvenile Justice(Care and Protection of Children) Act, 2000 (hereinafter referred to as the Act, 2000), being aggrieved by the order passed by First ASJ, Mandsaur, District - Mandsaur(M.P.) in criminal appeal No.410/2023 vide order dated 23/1/2023 dismissed the appeal of the applicant filed under Section 101 of the Juvenile Justice Act affirming the order of Principal Magistrate, Juvenile Justice Board, Mandsaur whereby the application under Section 12 of The Act, 2000.

The minor is an accused in crime No.345/2022, for commission of offences under Section 302, 201, 120-B of IPC, registered at Police Station - Daloda, District - Mandsaur. On behalf of accused Krish Rao being a minor person his father Mahesh Rao filed an application under Section 12 of the Juvenile Justice Act before Juvenile Justice Board (in short JJB) which was rejected by the Principal Magistrate, Mandsaur by order dated 16/1/2023. The applicant father filed an appeal under Section 101 of The Juvenile Justice Act, 2015 before the ASJ, Mandsaur. By the impugned order, the said Appeal has also been rejected.

In a nutshell the facts of the case are that, on 8/10/2022 first information report was lodged by complainant Suresh at Police Station Daloda, in which it was stated that on 22/9/2022 present applicant and co-accused Anand Patidar and Deepak Malviya had taken deceased Vasudev Darji on a motorcycle. It was further alleged that, Vasudev Darji had love affair with the sister of co-accused Anand Patidar. According to further case of prosecution, in a Khandar near Saraswati School Krishi Mandi, applicant and co-accused apprehended Vasudev Darji and co-accused Anand Patidar gave 4-5 knife blows on his chest and thereby caused his death. On the above, all the culprits including present applicant were arrested and as applicant was below the age of 18 years was produced before JJB, Mandsaur and has been lodged in Child Care Home.

The applicant through his father moved an earlier application under Section 12 of Juvenile Justice (Care and Protection of Child) Act, 2015 before JJB for granting bail to applicant, a child in conflict with law, which was dismissed and appeal No.175/22 filed against order of JJB was also dismissed on 28/11/2022 on its virtues and vices.

The applicant through his father moved second application before JJB

for releasing child in conflict with law on bail. The application has been dismissed vide impugned order dated 16/1/2023 by JJB, Mandsaur, hence this appeal filed under Section 101 of Juvenile Justice (Care and Protection of Child) Act, 2015.

Learned counsel appearing for the applicant has submitted that, child in conflict with law has falsely been implicated in which he is in observation home since 9/10/2022. He has further submitted that co-accused Mukesh Patidar has been released on bail by this Court itself vide order dated 11/1/2023 passed on bail application no.36/23. On the above, it is submitted that, appeal be allowed and child in conflict with law be released on bail for which his father is ready to furnish bonds directed by this Court.

This Court vide order dated 22/2/2023 called a report of Probation Officer. As per the report of the Probation Officer, the conduct of the applicant in the Child Care Home is good and his family members are in position to have control over him. It is further submitted that he is studying in class 10th. He recommended for consideration of the case on the basis of the recommendation. The bail application of the applicant has been rejected by the Principal Magistrate and the Revisional Court, only considering the heinous offence of murder, which could not be sole consideration for rejecting the application.

Counsel for the State supports the orders impugned and submits that Court rightly rejected the application for grant of bail, however, does not dispute the report of the Probation Officer.

Before considering the legality, correctness and validity of the order passed by the Courts below, it would be apposite to refer 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 Criminal Procedure Code, 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."

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 is in conflict with law and would defeat the ends of justice.

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.

In case of *Narayan Sharma v. State of M.P.*, ILR 2012 MP 796 a Co-ordinate Bench of this Court while considering the provision of the Section 12 of the Act observed as under:

"In the opinion of this court, the Juvenile Justice Board may be justified in denying bail to a juvenile involved in a heinous crime only if there is material before it to form a prima facie opinion on the aspects carved out as exception to rule of bail in section 12 of the Act itself. There must be some mechanism with the Juvenile Justice Board to gather material and form an opinion as to whether the juvenile

need to be denied bail by bringing his case under the exceptions to bail engrafted in Section 12. The opinion to be formed by the Board, by no means, can be subjective and has to be objective. Either the prosecution should place some prima facie material before the Board or the Court to show that release of a juvenile on bail may expose him to moral, physical or psychological danger of the Board may obtain a report from the Probation Officer attached to the Board regarding antecedents and circumstances attended to the juvenile, both pre and post crime and it is only thereafter the Board or the Court should crystallize its opinion regarding release or non release of the juvenile on bail, though involved in a heinous crime. A reference to the statutory provisions governing bail to a juvenile contained in section 12 would show that there is a mandate of law that the juvenile has to be released on bail, except only in those cases where the case fall in one or the other exception engrafted by the legislature in Section 12 itself."

It has been observed in *Pratap Singh v. State of Jharkhand, 2005 SCC (Cri) 742*, that:

"the whole object of the Act is to provide for the care, protection, treatment, development and rehabilitation of neglected delinquent juveniles. It is a beneficial legislation aimed at to make available the benefit of the Act to the neglected or delinquent juveniles. It is settled law that the interpretation of the statute of beneficial legislation must be to advance the cause of legislation to the benefit for whom it is made and not to frustrate the intendment of the legislation."

Further it has been observed in *Sanjay Chaurasia v. State of U.P., (2006) 55 ACC 480* that:

"10.In case of the refusal of the bail, some reasonable grounds for believing above mentioned exceptions must be brought before the Court concerned by the prosecution but in the present case, no such ground for believing any of the above mentioned exception has been brought by the prosecution before the Juvenile Justice Board and

Appellate Court The Appellate Court dismissed the appeal only on the presumption that due to commission of this offence, the father and other relatives of other kidnapped boy had developed enmity with the revisionist, that is why in case of his release, the physical and mental life of the revisionist will be in danger and his release will defeat the ends of justice but substantial to this presumption no material has been brought before the appellate court and the same has not been discussed and only on the basis of the presumption, Juvenile Justice Board has refused the bail of the revisionist which is in the present case is unjustified and against the spirit of the Act."

In the aforesaid judgments, it has been held that the bail application of a child in conflict with the law cannot be rejected merely on the ground of seriousness of the crime. The only exception to grant of bail to a child in conflict with the law is the reasonable ground for believing that release would bring him into association with any known criminal or expose him to moral, physical or psychological danger or his release would defeat the ends of justice.

Considering the aforesaid enunciation of law and the report of the Probation Officer, this Court is of the opinion that the application filed by the father on behalf of minor Krish Rao deserves to be allowed.

It is directed, that the accused Krish Rao/juvenile through his guardian father be released on bail in crime No.345/2022 registered at Police Station Daloda, District - Mandsaur for commission of offences punishable under Section 302, 201, 120-B of the IPC upon furnishing personal bond of his father of **Rs.50,000/-** with one surety of his relative in the amount of **Rs.50,000/- each** to the satisfaction of the Juvenile Justice Board, Mandsaur on the following conditions:-

(1) During bail period, applicant/juvenile-A will remain in his supervision and control and he shall be responsible for his maintenance,

well being and other activities.

(2) Father shall undertake that upon release on bail juvenile-A will not be permitted to go into contact or association with any known criminal or allowed to be exposed to any moral, physical, or psychological danger and further that the father will ensure that the juvenile will not repeat the offence. Juvenile will pursue his study and not allowed to waste his time in unproductive and excessive recreational pursuits.

(3) Juvenile and natural guardian/father will report to the Probation Officer on the every last date of the calendar month and Probation Officer will keep a strict vigil on the activities of the juvenile and regularly draw up his social investigation report that would be submitted to the J.J. Board, on such a periodical basis as the Juvenile Justice Board may determine.

(4) Natural guardian/father shall also ensure of the appearance of the Juvenile-A before J.J. Board on all the dates fixed by it till the final disposal of the case pending before it.

With the aforesaid, the Criminal Revision is allowed and disposed off.

(VIJAY KUMAR SHUKLA)
JUDGE

Pramod