

1
**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

**BEFORE
HON'BLE SHRI JUSTICE DINESH KUMAR PALIWAL
ON THE 29th OF SEPTEMBER, 2022**

CRIMINAL REVISION No. 2865 of 2022

BETWEEN:-

**A S/O B THOURGH B S/O C, AGED ABOUT 50
YEARS, OCCUPATION: ASSISTANT GRADE III,
D.E.O. OFFICE W Aidhan R/O VILLAGE
GHURITAL POLICE STATION W Aidhan DISTT.
SINGRAULI (MADHYA PRADESH)**

.....APPLICANT

(BY SHRI ANIRUDHA PRATAP SINGH, ADVOCATE)

AND

- 1. THE STATE OF MADHYA PRADESH THROUGH
POLICE STATION W Aidhan SINGRAULI
(MADHYA PRADESH)**
- 2. RAJESH SHAH S/O JAMAHER SHAH, AGED
ABOUT 36 YEARS, OCCUPATION: LABOUR IN
VIDHYANAGAR BLAST R/O HAARREI WEST
W Aidhan DISTRICT SINGRAULI (MADHYA
PRADESH)**

.....RESPONDENTS

(BY SHRI MANOJ KUSHWAHA, PANEL LAWYER)

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

ORDER

The Present Criminal Revision has been preferred under Section 102 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as "J.J. Act, 2015") against the judgment dated 21.07.2022 passed by IInd Additional Sessions Judge Waidhan Distrit Singrauli, in Criminal Appeal No. 36/2022 arising out of Crime No. 665/2022 whereby the Appellate Court

has rejected the appeal and affirmed the order dated 12.07.2022 passed by Member, Juvenile Justice Board, Singrauli. The Juvenile Justice Board has rejected the bail application of Juvenile A, which had been filed by his natural guardian/father, under Section 12 of "J.J. Act, 2015", in Crime No. 665/2022 under Sections 302 and 377 of the I.P.C. and under Section 5/6 of POCSO Act.

2. Being aggrieved by the appeal judgment and order dated 21.07.2022 passed by the Appellate Court as well as the order dated 12.07.2022 passed by Juvenile Justice Board, the Juvenile-A through his father has filed this criminal revision before this Court.

3. Learned counsel for the applicant has submitted that at the time of commission of offence, Juvenile was below 18 years of age. He was 12 years and 9 months old at the time of incident as per educational certificate date of birth of Juvenile-A is 05.09.2009. He has no criminal antecedent.

4. It is further submitted that Juvenile-A is not named in the first information report and has been falsely implicated during the investigation without any material evidence. It is further submitted that after three days of incident, the Juvenile-A has been implicated and apprehended by the police on 15.05.2022 on the basis of suspicion. It is further submitted that there is no evidence to show that if the Juvenile-A is released on bail, his 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. No such findings were recorded as to how he will come in contact with known criminals and how he will be exposed to moral, physical, or psychological danger, or that his release would defeat the ends of justice. The Juvenile-A is in custody in an observation home since 16.05.2022.

5. Learned counsel for the applicant has further submitted that the Juvenile-A has not committed any offence and has no criminal antecedent except the present case. He is not a previous convict and is not associated with any kind of other criminal activities. There is no report regarding any previous criminal antecedents of the family of the applicant and there is no chance of the juvenile-A re-indulgence to bring him into association with known criminal. The natural guardian/father of the applicant is a government servant as he is employed in a school. He is ready to give an undertaking that if Juvenile-A's is released on bail, he will keep him in his custody and look after him properly and has assured on behalf of the juvenile that he is ready to cooperate with the process of law and shall make the juvenile available before the J.J. Court whenever required and is ready to accept all the conditions whatsoever are imposed by the Court upon him.

6. It has been further submitted that the J.J. Board as well as the Appellate Court have not appreciated the Social Information Report of the Probation Officer in its right perspective and passed the impugned order and judgment in a cursory manner without considering the object of the law enacted for the benefit of the Juvenile and have refused to release the applicant on bail. It is submitted that a perusal of the impugned orders demonstrates that the same has been passed on flimsy grounds, which have occasioned a gross miscarriage of justice. The judgment and order passed by the learned Courts below are erroneous and bad in law and are based on erroneous appreciation of the facts and law.

7. On the other hand, learned Panel Lawyer for the respondent/State has supported the impugned judgment and order passed by the Courts below

and has submitted that Juvenile-A has committed a heinous offence in a preplanned manner and gruesome murder has been committed by the Juvenile-A after fulfilling his carnal lust. There is every possibility that if the juvenile-A is released, he will come into contact with known criminals and will get expose to moral, physical, or psychological danger, Therefore, he has prayed that considering the gravity of the offence, the present criminal revision filed by the father of Juvenile is liable to be dismissed.

8. I have carefully considered the submissions made by the learned counsel for the applicant and learned P.L. for the State and perused the material on record.

9. It is undisputed that the date of birth of Juvenile conflict with law is 05.09.2009 and as such it is apparent that at the time of commission of offence, he was 12 years and 9 months old on the basis of age mentioned in the school education certificate.

10. The bail application under Section 12 of "J.J. Act, 2015" has been rejected by the Juvenile Justice Board vide order dated 12.07.2022 observing that the ghastly crime of carnal intercourse against ordinary course of nature and murder has been committed by the Juvenile-A, there appears a reasonable ground for believing that the guardian and family member of the juvenile-A can create no confidence in the mind of common people and society at large. It is further observed that as per the social report, it reveals that his parents are not able to take care of the Juvenile-A. It is also observed that guardian of the Juvenile have no effective control over him and there is a possibility of re-occurrence of the offence after his release which is likely to bring him into association with other known criminals. Learned Appellate Court has also affirmed the order passed by the Juvenile Justice Board and observed that

Juvenile-A has committed the heinous offence as he not only committed a carnal assault upon the deceased boy but killed him also. It was further observed by the Appellate Court that the moral level of the child is very poor. He has committed the offence of moral turpitude and there is no discipline at his house.

11. Before considering the legality, 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."

12. 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.

13. 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.

14. In case of "Narayan Sharma Vs. State of MP ILR (2012) MP 796 A Coordinate 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 crystallized 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."

15. It has been observed in Pratap Singh Vs. State of Jharkhand & another 2005 SCC (Criminal) 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.

16. Further it has been observed in Sanjay Chaurasia Vs. State of U.P. and another 2006 (55) SCC 480 that:-

"10. In case of the refusal of the bail, some reasonable grounds for believing above mentioned xx 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 teen 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 in the present case is unjustified and against the spirit of the Act."

17. Coordinate Benches of this Court in case of ***Karan Vs. State of MP in Cr.R. No. 5159/2018 decided on 14.01.2019 and Girdhar Vs. State of MP in Cr.R. No. 509/2021 decided on 17.03.2021*** has 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.

18. Section 13(1)(ii) of "JJ Act, 2015" provides that the Probation Officer shall submit a social investigation report within two weeks from when a child is apprehended or brought to the Board, containing information regarding the antecedents and family background of the child and other material circumstances likely to be of assistance to the Board for making the inquiry. The "social investigation report" which has been defined in Rule 2(xvii) of The Juvenile Justice (Care and Protection of Children) Model Rules, 2016, means the report of a child containing detailed information pertaining to the circumstances of the child, the situation of the child on economic, social, psycho-social and other relevant factors, and the recommendation thereon. This

report becomes important for the inquiry to be done by the Board while passing such orders in relation to such a child as it deems fit under Sections 17 and 18 of this Act. The purpose behind this provision is to enable the Juvenile Justice Board to get a glimpse of the social circumstances of the child before any order regarding bail or of any other nature is passed.

19. 'Form-6' of the Model Rules, 2016, contains a detailed proforma of the social investigation report. The social investigation report submitted by Probation Officer and Child Welfare Officer and it is incumbent upon the juvenile Justice Board to take into consideration the social investigation report and make an objective assessment on the reasonable grounds for rejecting the bail application of the juvenile.

20. Social Investigation Report (SIR) given by the Probation Officer is as under:-

40. वे परिस्थितियां जिनमें बालक को गिरफ्तार किया गया था—

बालक के अनुसार मैंने कुछ नहीं किया मुझे झूठा फंसाया गया है। बालक के अनुसार पुलिस ने मुझे बहुत मारा था तथा मुझसे जबरदस्ती अपराध कबूल करवाया था बालक के अनुसार मैं और भइया शादी में गये थे तथा खाना—पीना खाकर वापस आ गये थे मैं उस लड़के से मिला भी नहीं था। बालक के अनुसार पुलिस ने गणेश व शिवपूजन को भी पकड़ा था लेकिन उन दोनों को छोड़ दिया और मुझे फंसा दिया। बालक के पिता के अनुसार जिस लड़के का मर्डर हुआ उसके पिता भी कह रहे थे कि शिवपूजन ने मेरे लड़के को मारा है पुलिस ने शिवपूजन को पकड़ा भी था लेकिन फिर उसे छोड़ दिया।

41- vijk/k esa ckyd dh rFkkdfFkr Hkwfedk & vijk/k esa ckyd dh D;k Hkwfedk gS dqN Hkh dguk laHko ugha gS ysfdu fitl dzwjrk ds lkFk eMZj fd;k x;k gS bruh de mez dk ckyd ;g dSls dj ldrk gS lkspus dk iz'u gS xyk nck dj ekjuk le> esa vkrk gS ekjus ds ckn iRFkj ls lj dqpyuk ,d 12&13 lky dk ckyd

dSls dj ldrk gS le> ds ijs gSA

7- ifjoh{kk vf/kdkjh@ cky dY;k.k vf/kdkjh@ lkekftd dk;ZdrkZ }kjk iquokZl ds laca/k esa flQkfj'k& ckyd ds xkao o ifjokj dk okrkoj.k vPNk gS ifjokj ds lnL;ksa dk HkkokRed okrkoj.k Hkh vPNk gS ckyd dk dksbZ vkijkf/kd fjdkMZ ugha gS A ckyd dks mlds ifjokj ds lkFk j[kus ls ckyd dks fdlh rjg dh 'kkjhfd ekufld ;k uSfrd gkfu gksus dh dksbZ laHkkouk ugha fn[krh gS] u fdlh vkijkf/kd izd`fr ds O;fDr ds laidZ esa vkus dh laHkkouk fn[krh gSA ckyd vHkh flQZ 12 o"kZ 3 ekg dk gks jgk gS ;fn ;g eku Hkh fy;k tk;s fd ckyd us eMZj fd;k gS rks Hkh ckyd vijk/k ds ifj.kke dks le>us esa l{ke ugha gSA lkFk gh ckyd bl lky 7oh esa i

vr% fd'kksj U;k; cksMZ dks mfpr QSlyk djuk pkfg, ftlls ckyd dks fdlh rjg ls dksbZ gkfu u gks o ckyd dk Hkfo"; mTtoy gks lds rFkk U;k; dh Hkh gkfu u gksA

21. In this case, FIR has been lodged on 13.05.2022 by the father of deceased. As per the First Information Report on 12.05.2022 there was a marriage function of his neighbor Ram Sajeewa Shah's daughter. Barat had come, in that program at around 9:00 pm, he along with his son who was 11 years and along with his brother's son who is 08 years had gone to attend the marriage function. He came back from there. At around 10:30 pm his deceased son brought snack from the marriage function and handed over the same to his younger sister and went back by informing his mother that he will return home after having meal. At around 11:30 pm his wife informed that child has not returned from the marriage function. He went to the house of Ramsajeewan and other places to search him but he could not be traced. Next morning he came to know that dead body of his son is lying in the field of Teerath Prasad Shah. When he went there he found his son was dead having injuries. His son's pant is

not at the proper place. Blood stained half brick and some pieces of broken bricks are lying there. Someone has murdered.

22. Thus, it is clear that no named FIR has been lodged against the Juvenile-A. Bail application of the Juvenile-A has been dismissed only on the ground that he has committed heinous offence but in view of the above discussion, the reason and conclusion arrived by the Appellate Court as well as the the Juvenile Justice Board in the impugned judgment and order for dismissing the application for giving the Juvenile on supurdagi, I am of the view that both the Courts below have not properly appreciated the mandatory provisions of Section 12 of "J.J. Act, 2015" as well as other provisions in relation to juvenile 'A' and have declined to grant bail merely on the basis of unfounded apprehension. In the absence of any material or evidence with reasonable grounds, it cannot be said that his release would defeat the ends of justice. Thus, it is explicit that J.J. Board and Appellate Court both have not recorded the findings on the three contingencies for declining the bail to the juvenile A. Therefore, I am of the considered view that order dated 12.07.2022 passed by the Juvenile Justice Board and appeal Judgement dated 21.07.2022 passed by the Appellate Court are not sustainable. Hence, the above-mentioned orders are set aside and the present criminal revision filed by the father of juvenile is allowed as he is ready to take care of his son.

23. It is directed that Juvenile-A through his guardian/father be released on bail in Crime No. 665/2022 of P.S. Waidhan District Singrauli for commission of under Sections 377 and 302 of IPC and Section 5/6 of POCSO Act upon furnishing a personal bond of his father of Rs. **1,00,000/- (Rupees One Lakh Only)** with two solvent sureties of his relatives in the amount of the

Rs. 50,000/- (Rupees Fifty Thousand Only) each to the satisfaction of Juvenile Justice Board, Waidhan District Singrauli, subject to 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.

24. This Criminal Revision is **Allowed** accordingly.

(DINESH KUMAR PALIWAL)
JUDGE

