

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

BEFORE

HON'BLE SHRI JUSTICE DINESH KUMAR PALIWAL

ON THE 23rd OF FEBRUARY, 2023

CRIMINAL REVISION No. 3976 of 2022

BETWEEN:-

**CHILD IN CONFLICT WITH LAW S/O SURESH
KUSHWAHA, AGED ABOUT 15 YEARS, OCCUPATION:
MINOR THROUGH UNDER GUARDIANSHIP OF MR.
SURESH KUSHWAA (FATHER) AGED ABOUT 15 YEARS
OCCUPATION STUDENT HANUMAN NAGAR NAI BASTI
POLICE STATION KOLGAWAN DISTRICT SATNA
(MADHYA PRADESH)**

.....APPLICANT

(BY SHRI ASHOK KUMAR VISHWAKARMA - ADVOCATE)

AND

**THE STATE OF MADHYA PRADESH THROUGH POLICE
STATION KOLGAWAN DISTRICT SATNA (MADHYA
PRADESH)**

.....RESPONDENT

**(BY SHRI SHAILENDRA MISHRA - PANEL LAWYER FOR
RESPONDENT/STATE AND SHRI RAMESH TAMRAKAR - ADVOCATE FOR
THE OBJECTOR)**

RESERVED ON : 30.01.2023

DELIVERED ON : 23.02.2023

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

ORDER

This Criminal Revision has been preferred under Section 397 read with section 401 of Cr.P.C alongwith section 102 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as "J.J. Act, 2015") against the appeal judgment dated 20.07.2022 passed by Third Additional

Sessions Judge and Special Judge POCSO Act, District Satna, in Criminal Appeal No. 90/2022 arising out of Crime No. 920/2022 of P.S. Kolgawan for offences under section 376,376-A, 376-C and 377 of the IPC and section 5-M,5-N/6 of Prevention of Children from Sexual Offences, Act, 2012 (for short "POCSO Act"), whereby appeal has been dismissed and the order dated 12.07.2022 passed by the Principal Magistrate Juvenile Justice Board, Satna rejecting the bail application of child in conflict with law has been affirmed.

2. As per the allegations, on 29.6.2022, six years old prosecutrix's father alongwith his wife and father appeared at P.S. Kolgawan and lodged F.I.R. stating that he is a JCB driver. There are two shops on the ground floor of his house and out of these shops one iron shop is being run by Sonu Bhai and betel shop is being run by his father. He is blessed with two daughters. His eldest daughter is six years old and youngest daughter is five years old. On 29.06.2022 at around 3.00 P.M. after having meal, he was sleeping in his house. His elder daughter was playing near the shops. At around 4.00 P.M. his wife raised alarm and told him that elder daughter is bleeding, at this when he went near the shop, he found her daughter weeping bitterly in his father's lap. She was profusely bleeding and was without underwear. She informed that the Child in conflict with law, who is his neighbour, was sitting in his uncle's iron shop. As no one was there and shutter of the shop was half closed, he called her inside the shop and displayed some obscene material on mobile. Thereafter, he took-out her panty and committed rape/ aggravated penetrative sexual assault upon her. When she started screaming, he pressed her mouth. Blood started oozing. Thereafter, he left her and proceeded towards his house. When she came weeping outside the shop, her grand father came and lifted her in his lap. His daughter was bleeding profusely. She was weeping

due to severe pain. She was repeatedly taking the name of Child in conflict with law. They all had gone to the house of Child in conflict with law and he confessed his crime. F.I.R. was registered.

3. In medical examination of the victim, 2nd to 3rd degree perineal tear was seen, bleeding was present and haematoma of vaginal wall was seen. The doctor has opined about signs of recent forceful intercourse. After giving first-aid, victim/ child was referred for further medical treatment. As Child in conflict with law was found juvenile, the charge sheet was filed before the Juvenile Justice Board. The Child in conflict with law was found 15 years and 3 months old in age. The social investigation report was called, wherein, it was observed by the Probationary Officer that juvenile in conflict with law has studied up to class-IX only. He had shun his studies after class IX. He is used to take drugs. His parents are labourers. Earlier, he had worked on daily wages in the victim's uncle shop also.

4. 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 juvenile was also dismissed. The learned Addl. Sessions Judge has taken into account the fact that juvenile in conflict with law is in habit of taking narcotic substance and is not studying anywhere.

5. Learned counsel for the applicant has submitted that at the time of commission of offence juvenile was below 16 years of age. He has no criminal antecedents. He has been falsely implicated without any material evidence. It is further submitted that there is no evidence on record to show that if the Juvenile 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. Parents of the juvenile are ready to give an undertaking that if juvenile is released on bail, they will keep him in custody and look after him properly. It has been further submitted that Juvenile Justice Board as well as the appellate court have not properly appreciated the facts of the case and have passed the impugned order in cursory manner without considering the object of the law enacted for the benefit of the juvenile and have refused to release the juvenile on bail.

6. On the other hand, learned counsel for the objector as well as learned panel lawyer for the respondent/State have supported the impugned judgment and order passed by the courts below and have contended that the juvenile has committed a heinous offence in a preplanned manner after showing obscene video to six years old girl child and has made aggravated penetrative sexual assault upon her which shows his depravity of mind. Therefore, they have prayed that considering the gravity of the offence, the present criminal revision filed on behalf of juvenile be dismissed.

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

8. It is undisputed that at the time of commission of offence, juvenile in conflict with law was fifteen years and three months old. Learned Juvenile Justice Board and learned Addl. Sessions Judge have taken into consideration the ghastly crime committed by the juvenile. They have also taken note-of the report of Probationary Officer.

9. It is true that gravity of the offence alone cannot be a ground to

reject the bail application but where a helpless child of six years age is raped after showing obscene video, 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."

10. 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.

11. 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.

12. 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 women and innocent children. Therefore, while considering the prayer for bail in cases related to rape/ aggravated penetrative sexual assault upon a minor, particularly, tender aged girl, the court has to see whether release would not expose juvenile to the danger of retribution by the Society. In cases of rape with 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.

13. 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'.

14. The rape of a helpless and innocent child shows the depravity of the mind of the person committing offence. Rape/aggravated penetrative sexual assault 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 ravish somebody's modesty. Where rape is committed with helpless victim of six years, the cruel mentality of the author of the crime is more than manifest. While considering bail to a juvenile in conflict with law gravity of the 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. The rape with a child of six years reflects the criminal mindset of the offender, granting bail to such a juvenile will not only expose him to moral, physical and psychological danger but would also lead to defeat the ends of justice. The object of juvenile justice is not only reformatory but to 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 for whose need and care Protection of Children from Sexual Offence Act, 2012 has been enacted. The Juvenile Justice Act has also 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 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 girl of tender age of six years was put to violent sexual assault by a boy of more than 15 years of age. Boy is her neighbor and was working in her uncle's shop. She had never think of such act from a boy who was working in the shop of her own uncle. Victim was taken inside the shop in a well planned manner for showing the video clips. Thereafter, the juvenile in conflict displayed her the obscene video and sexually assaulted her causing grievous injuries on her private parts. 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 child who needs care and protection, 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 need or welfare of the victim child. The provisions of bail for juvenile cannot be interpreted to work only for the benefit of juvenile ignoring the cries of victim child whenever, a child becomes victim of offences, let alone heinous offences like rape/aggravated penetrative sexual assault, murder society craves and cries for justice. By showing misplaced sympathy to a juvenile, who has perpetrated offence like rape/aggravated penetrative sexual assault upon victim (child) and 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 Additional Sessions Judge has not committed any error in rejecting the bail.

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, Satna is directed to expedite the hearing of the case and conclude the case at the earliest.

(DINESH KUMAR PALIWAL)
JUDGE

MKL

