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Court : Mumbai Nagpur

Decided On : Feb-04-2015

Judge : S.B. Shukre

Appeal No. : Criminal Writ Petition No. 108 of 2015

Appellant : Prashant

Respondent : The State of Maharashtra

Judgement :

Oral Judgment:

1. Heard. Rule, returnable forthwith. Heard finally by consent.

2. This is a case which calls for attention of the Court in addressing an important issue: How to deal with a child in conflict with law, who has involved himself in something which is viewed by the society at large as a heinous crime, although the child does not understand the enormity and consequence of the act committed by him. The law, on its part, does not look down upon such children as delinquents or criminals and only prefers to call them as children in conflict with law. It means, whatever behaviour they indulge in, is not viewed as a behaviour pregnant with mens rea or intention to commit a crime. That is the reason why the Juvenile Justice (Care and Protection of Children) Act, 2000 (for short, the said Act, 2000) has been brought on the statute book. Its object is to consolidate and

amend the law relating to juveniles in conflict with law and children in need of care and protection, by providing for proper care, protection and treatment by catering to their developmental needs and by adopting a child-friendly approach. All is done in the interest of such children with a view to ultimately provide for their rehabilitation and transforming them into better persons. Therefore, in a case like the present one, I am of the view that the authorities below ought to have adopted a different approach in consonance with the object of the said Act, 2000, as rightly submitted by learned Counsel for the petitioner.

3. No doubt, learned A.P.P. for the State is right when he submits that the alleged act committed by the petitioner is quite serious one as the first information report discloses that the applicant has been alleged to have committed sexual assault upon daughter of the complainant, who was aged about 1 years of age when the alleged incident took place. The alleged incident took place on 20/12/2014 in the house of the complainant. But, the fact remains that even for such an act, which is viewed by the adults as a serious one, the child cannot be attributed with any criminal intention. The act, from the view point of the child in conflict with law, is an impulsive behaviour done without any intention. All the same, from the lens of law, it is deviant behaviour, short of any criminality attached to it, it being inconsistent with the established norms of behaviour of the society. Sometimes it does happen that children simply do not want to go by the established rules of conduct and out of curiosity do flout them, but when they do so, the law does not look down upon them as criminals. Such children, in the eye of law, rather require care and protection of their parents, their guardians or the persons appointed by law for taking care of such children, so that their personality and character are cast into largely acceptable social moulds. This is the reason why the said Act, 2000 shuns the terms such as juvenile offender, juvenile delinquent, juvenile criminal and so on and chooses to call such a child as child in conflict with law or child in need of care and protection and requires a child friendly approach to be adopted in a case involving such a child. Therefore, in the instant case, a different approach, which serves the interests of the child in conflict with law and also caters to interests of the victim and prosecution will have to be adopted.

4. Viewed from this angle, I find that this Court will have to consider as to in whose custody the child in conflict with law would be looked after well, and is not allowed or tempted to indulge in any unpleasant or deviant behaviour so that he is made into a better human being from the view point of the general members of the society, thereby protecting interests of the child as well as the prosecution.

5. In the instant case, the Juvenile Justice Board has refused to release the child in conflict with law on bail and directed the child to be kept at the observation home. When an appeal was filed even the learned Additional Sessions Judge did not consider the issue as to in whose custody the interests of the child in conflict with law will be better looked after and how the interests of prosecution will be better protected and thus rejected the appeal.

6. The child in conflict with law involved in this case is already having parents. His father has moved the present writ petition and as stated by learned Counsel for the petitioner, both of his parents are capable of taking proper care of the child and also looking after his educational and developmental needs. The father of the child is a cook by profession and mother of the child is housewife. This would mean that at least one parent is available in the house to take care of the child, if the child is given into custody of the parents. On the other hand, if the child is left in the custody of a caretaker at the observation home, sudden removal of child from his homely atmosphere may psychologically affect the child in an adverse way. Minor male children, it is common experience, most of the times are more attached to their mothers and it has also been the common experience that the male children obey the commands of their mothers more often than not their fathers. This is not a case where the child is not having parents and is a vagabond. Therefore, I am of the view that this is a case wherein interests and welfare of the child in conflict with law would be better taken care of if the child is left in the custody of his parents and is allowed to be looked after by his parents in a homely atmosphere rather than the atmosphere of formality and even anonymity in the observation home. This will also help in better counselling of the child and keeping of proper watch on his activities, thereby serving the interests of the prosecution.

7. Viewed in this manner, I think that this is a fit case for granting bail to the child in conflict with law in view of the provision of Section 12(1) of the Act,, 2000, which will only ensure to protect the child from being exposed to psychological disorder, which may ultimately prove to be against the interests of prosecution.

8. At this stage learned Counsel for the petitioner has also submitted that the extra ordinary power of this Court should be exercised in directing the Maharashtra Secondary School Examination Board to allow the child in conflict with law to appear at 10th standard examination. But, in this writ petition, I do not think, such a direction can be issued to the Board without hearing it as what I can see from the reply of the prosecution is that there appears to be one more reason for his debarment from the said examination. At the same time, I must say that the Maharashtra Secondary School Board must consider the problem of child in conflict with law, as denying him any opportunity to take up 10th standard examination may cause psychological damage to the child. By saying so, I am not passing an order that the Board must grant necessary permission to the child. All that is being conveyed by these observations is that hearing should be given by adopting a child friendly approach, and discretion be exercised within the four-corners of applicable rules.

9. In the result, I am inclined to partly allow the petition.

I. The writ petition is partly allowed.

II. It is directed that the child in conflict with law shall be released on bail on executing a P. R. Bond in the sum of Rs.15,000/- by his father for ensuring production of the child before the Juvenile Justice Board as and when required subject to the condition that father of the child shall produce the child before the Juvenile Justice Board on every Wednesday at 11.00 a.m. and submit brief report to the Board regarding behaviour and progress of the child, until final report is filed. In case the Board feels it necessary to give further directions in order to provide more care and protection to the child in conflict with law, the Board is at liberty to do so.

III. As regards the prayer of the petitioner to issue direction to the Maharashtra Secondary School Board for allowing the child to take up 10th standard examinations, it is directed that the Board shall give hearing to the father of the child upon an application made in this regard and after hearing of the father of the child, shall pass an appropriate order in the matter.

Rule is made absolute in the above terms.

Hamdast granted.

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