

Amit Vs. State of U.P.

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Court : Allahabad

Decided On : Aug-28-1998

Reported in : 1999CriLJ1878

Judge : P.K. Jain, J.

Acts : [Juvenile Justice Act, 1986](#) - Sections 2, 7(1), 7(3), 8(1), 8(2), 18, 18(1), 37, 37(1) and 38; [Code of Criminal Procedure \(CrPC\), 1973](#); Indian Penal Code (IPC) - Sections 120B, 302, 307 and 506

Appeal No. : Criminal Misc. Bail Appln. No. 12985 of 1998

Appellant : Amit

Respondent : State of U.P.

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : P.K. Tripathi and ;Mridul Tripathi, Advs.

Judgement :

ORDER

P.K. Jain, J.

1. Heard learned counsel for the parties.

2. Bail prayer on behalf of the applicant is pressed on the ground that he is assigned the role of exhortation and conspiring with actual assailants and that the applicant's age is below 16 years and thus he is juvenile. Learned A. G. A. submits that considering heinous nature of the offence the applicant is not entitled to bail.

3. The plea regarding age of the applicant was also taken before the learned Sessions Judge. It is really shocking that the learned Sessions Judge without adverting to the provisions of the [Juvenile Justice Act, 1986](#) (hereinafter referred as the Act) brushed aside the arguments by observing that merely on the ground that the applicants are minors they are not entitled to bail.

4. [Juvenile Justice Act, 1986](#) came into force w.e.f. 2nd October, 1987 vide official Gazette Notification dated 13-8-87. Section 7(1) of the Act confers exclusive jurisdiction upon the Board or Juvenile Court constituted for the area with regard to all proceedings relating to neglected juveniles or delinquent juveniles. Section 2(e) of the Act defines 'delinquent juvenile' as a juvenile who has been found to have committed an offence. Sub-clause (3) of Section 7 of the Act further provides that the powers conferred on the Board or Juvenile Court by or under this Act may also be exercised by the High Court and the Court of Sessions, when the proceeding comes before them in appeal, revision or otherwise. Section 37(1) of the Act specifically provides that any person aggrieved by an order made by a competent authority under this Act may, within thirty days from the date of such order, prefer an appeal to the Court of Session and Section 38 of the Act provides that the High Court may, at any time, either of its own motion or on an application received in this behalf, call for the record of any proceeding in which any competent authority or Court of Session has passed an order for the purpose of satisfying itself as to the legality or propriety of any such order and may pass such order in relation thereto as it thinks fit. Section 18 of the Act provides that when any person accused of a bailable or non-bailable offence and apparently a juvenile is arrested or detained or appears or is brought before a Juvenile Court, 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 but he shall not be so released if there appear reasonable grounds for believing that the release is likely to bring him into association with any known

criminal or expose him to moral danger or that his release would defeat the ends of justice.

5. The learned Sessions Judge has overlooked all the above provisions of the Juvenile Justice Act. It has been found that most of the Sessions Judges while dealing with cases in which a plea of an accused being a juvenile, i.e. a male below the age of 16 years and in a female below the age of 18 years, is taken do not take recourse to the provisions of Juvenile Justice Act. As pointed out above, Section 7(1) of the Act confers exclusive powers and jurisdiction upon the Juvenile Court or Juvenile Welfare Board to deal with all proceedings, including proceeding in connection with trial for an offence, relating to neglected Juveniles or delinquent juveniles. Section 8(1) of the Act provides that when any Magistrate not empowered to exercise the powers of a Board or a Juvenile Court under this Act is of opinion that a person brought before him under any of the provisions of this Act (otherwise than for the purpose of giving evidence) is a juvenile, he shall record such opinion and forward the juvenile and the record of the proceeding to the competent authority having jurisdiction over the proceeding. Under Sub-section (2) of Section 8 of the Act the competent authority is required to hold enquiry as if the juvenile had originally been brought before it. Thus whenever a plea is taken that an accused is a juvenile the Court dealing with the case is required to record an opinion on such plea. Though there are divergent decisions on the question if the Sessions Judge has power to enter into enquiry regarding age of an accused or whether such enquiry could be made by a Magistrate empowered under Section 8(2) of the Act yet such an enquiry is necessary whenever plea of an accused being juvenile is raised. Therefore, it was incumbent upon the learned Sessions Judge to have either himself given a finding about the age of the applicant or to have referred the matter under Section 8(2) of the Act to the Juvenile Court to decide the question.

6. If on such enquiry the accused is found to be a juvenile then bail prayer could be dealt with by the Juvenile Court in accordance with the provisions contained in Section 18(1) of the Act. However, if either the prosecution or the accused is aggrieved by an order passed under Section 8(2) or 18(1) of the Act, such aggrieved party has a right to file an appeal under Section 37 of the Act and in

case any party feels aggrieved by the order of the Sessions Judge then the orders of the Courts below could be challenged in revision under Section 38 of the Act before the High Court. The learned Sessions Judge while disposing of the bail application of the applicant has ignored all these provisions of law and as observed above, brushed aside the plea of accused on the wholly untenable ground.

7. It is, however, not clear if the applicant had approached the competent Juvenile Court having jurisdiction over the area in which the offence was committed. Therefore, it would be proper to direct the applicant to approach the appropriate Juvenile Court for grant of bail and in case such a prayer is made before the appropriate Court then the same is required to dispose it of in accordance with the provisions of Section 18(1) of the Act. If the competent Court does not grant bail, the applicant is entitled to file an appeal under Section 37 of the Act and in case the Sessions Judge also refuses to grant bail the applicant has a right to approach this Court under Section 38 of the Act.

8. The application is, therefore, disposed of with an observation that the applicant may approach the competent Juvenile Court who will decide the question of applicant's minority if contested by the prosecution and also dispose of the bail application of the applicant in accordance with the provisions of Section 18(1) of the Act.

9. However, considering that the applicant is detained in jail with hardened criminals he is granted short term bail for a period of one month from the date of his release.

10. Applicant Amit involved in case crime No. 101 of 1998, under Sections 302, 307, 506 and 120-B of the I.P.C., P. S. Kandhla, district Muzaffarnagar shall be released on short term bail for a period of one month from the date of this release on furnishing a personal bond by his guardian with two sureties each in the like amount to the satisfaction of C.J.M. Muzaffarnagar to enable him (the applicant) to approach the competent Juvenile Court under Section 18(1) of the Act. In case an application under Section 18(1) or 8(2) of the Act is moved, the competent Juvenile Court shall dispose of the said application or proceedings expeditiously

and if the said application or proceedings are not disposed of within the period of applicant's remaining on temporary bail, he shall not be sent to jail and on expiry of the short term bail he may be sent to Juvenile home till disposal of the above proceeding/application.

11. The Registrar is directed to send copy of this order to all the Session Judges for their guidance and strict compliance of the provisions of Juvenile Justice Act.

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