

Sandeep Kumar Vs. State

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Court : Delhi

Decided On : Mar-21-2005

Reported in : 2005CriLJ3182; 119(2005)DLT398; 2005(81)DRJ755

Judge : Manju Goel, J.

Acts : Indian Penal Code (IPC) - Sections 34, 201 and 376; Juvenile Justice (Care and Protection of Children) Act, 2000 - Sections 12

Appeal No. : Cri. M.C. No. 2910/2004

Appellant : Sandeep Kumar

Respondent : State

Advocate for Def. : Sunil Sharma, Adv.

Advocate for Pet/Ap. : R.C. Pathak, Adv

Judgement :

Manju Goel, J.

1. This petition seeks bail for a juvenile who is in observation home since 29.10.2003. The juvenile was arrested by Police Station Alipur on 29.10.2003 for an alleged offence under Section 376/201/34 of the Indian Penal Code. The FIR in this case was lodged by the mother of the victim. The unfortunate victim was only

six years old at the time of commission of offence. On 29.10.2003 at 6.30 p.m. the victim came to her mother with tears in her eyes and with blood on her clothes which were wet and told her that Sandeep (the petitioner) took her to his house and committed ganada kam with her. The child also reported that the mother of the petitioner first took off her clothes washed them and sent her back in those wet clothes. The Juvenile Justice Board declined bail to him. So did the learned court of sessions when approached in the revisional jurisdiction. The Juvenile Justice Board in its order dated 3.6.2004 observed that instances of sexual offences on minor girls were on the rise and that in this case although the accused was a juvenile the victim was also of a very tender age. The Board took into consideration the report of the probation officer but ignored the advice of the probation officer on the point as to whether the petitioner deserves institutionalisation. The learned Additional Sessions Judge in its order found that if the juvenile was admitted to bail, the society will be in moral and physical danger as the victim was very tender in age.

2. Though I do not agree with line of reasoning adopted by the learned Additional Sessions Judge, I agree with the conclusions drawn by the learned Additional Sessions Judge as well as the Juvenile Justice Board. Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2000 enumerates three grounds when a bail to the juvenile can be declined viz if there appears reasonable grounds for believing that:

1. The release is likely to bring the juvenile into association with any known criminal.
2. Expose him to moral and physical or psychological danger.
3. His release would defeat the ends of justice.

3. In order to examine whether any of the three exceptions is present in the case a social investigation report was called for by the Juvenile Justice Board. The important parts of the social investigation report are as under:

1. The social and economic condition of the family is satisfactory.

2. The mother of the juvenile is concerned about the future of the juvenile.
3. The companions of the juvenile are in the same locality.
4. The juvenile was not very keen in his studies.
5. The juvenile worked as a labourer for about two months and earned Rs.80/- per day.
6. The neighbours gave a favorable report about the behavior of the juvenile.
7. The mother of the juvenile has full control over the juvenile.
8. The cause of delinquency is lack of proper guidance.
9. The juvenile says that he felt the genitals of the girl with his finger which caused bleeding.

4. It is clear from the above point that the social investigation report is self contradictory. The social and economic condition of the family cannot be said to be satisfactory, if the family sends the child, below sixteen years of age, to work as daily wager. It cannot be said that the mother has any control over the juvenile as the juvenile has committed an act depicting a criminal tendency. It cannot be said to be an act done in a sudden spurt of anger. The juvenile took the child to his house and committed rape showing clear criminal tendencies in him. The mother certainly is not concerned with the welfare of the child who instead of insisting that the child goes to school sends him out to work. In this situation if the juvenile offender is released from the observation home and sent back to the same socio-economic atmosphere, he will be exposed to moral and psychological dangers. Further the risk of juvenile committing such a offence in future is also a likelihood because victims of sexual offences of such tender age are often not even able to bring the offence to the notice of the elders. I do think that the interest of justice will be defeated if the juvenile is released on bail. The prayer for bail, therefore, has to be declined.

5. I find from the record of the Juvenile Justice Board that the prosecution has cited fifteen witnesses but in the last one year, since the commencement of the

trial only six have been examined. The Juvenile Justice Board is directed to examine the remaining witnesses within a period of two months and make every endeavor to dispose of the matter within one month of completion of prosecution evidence.

6. The petition is disposed of with this direction. The trial court file be sent back immediately.

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