

**Shashi Kumar Saini Vs. the State**

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**Court :** Delhi

**Decided On :** May-13-2005

**Reported in :** 120(2005)DLT313; 2005(82)DRJ255

**Judge :** Badar Durrez Ahmed, J.

**Acts :** Juvenile Justice (Care and Protection of Children) Act, 2000 - Sections 12; [Narcotic Drugs and Psychotropic Substances Act, 1985](#) - Sections 37; [Code of Criminal Procedure \(CrPC\) , 1973](#)

**Appeal No. :** Bail Appln 1131/2005 and FIR No. 385/2004

**Appellant :** Shashi Kumar Saini

**Respondent :** The State

**Advocate for Def. :** M.N. Dudeja, Adv.

**Advocate for Pet/Ap. :** Sanjeev Bajaj, Adv

**Judgement :**

**Badar Durrez Ahmed, J.**

1. The present petitioner is admittedly a juvenile within the meaning of the Juvenile Justice (Care and Protection of Children) Act, 2000. Though, there is some dispute as to whether the petitioner was 12 +- years old or 14 years old. Be that as it may,

the petitioner being a juvenile, the provisions of Section 12 of the Juvenile Justice Act, 2000 would be applicable. The Section reads as under:

'12. Bail of juvenile. - (1) 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 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 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, physical or psychological danger or that his release would defeat the ends of justice.

(2) When such person having been arrested is not released on bail under sub-section (1) by the officer in charge of the police station, such officer shall cause him to be kept only in an observation home in the prescribed manner until he can be brought before a Board.

(3) When such person is not released on bail under sub-section (1) by the Board it shall, instead of committing him to prison, make an order sending him to an observation home or a place of safety for such period during the pendency of the inquiry regarding him as may be specified in the order.'

2. The case for the prosecution is that from the present petitioner an alleged recovery of 9 kilograms 100 grams of ganja is said to have been made. The learned counsel for the petitioner, firstly, submitted that the petitioner is entitled to bail in terms of Section 12 of the Juvenile Justice Act, 2000 and even otherwise the alleged recovery is less than half of the commercial quantity specified and accordingly the rigours of Section 37 of the [Narcotic Drugs and Psychotropic Substances Act, 1985](#) (hereinafter referred to as 'the NDPS Act') would not be attracted.

3. The learned counsel for the State pointed out that the Additional Sessions Judge had dismissed the appeal filed on behalf of the petitioner against the order dated 13.12.2004 passed by the Juvenile Justice Board declining to release the petitioner on bail. He further submitted that the learned Additional Sessions Judge

had examined the case and had also gone through the provisions of Section 12 of the Juvenile Justice Act, 2000 as well as the decisions in the case of (1) Arvind v. State 1999 (2) JC (Delhi) 361; (2) Rafiq Ahmed v. The State (NCT of Delhi) 1998 (1) JCC (Delhi) 172 as also (3) Ramesh v. State of Delhi 1996 JCC 299.

4. Upon considering the decision of the learned Additional Sessions Judge dated 14.1.2005, it appears that he was impressed by the opinion of the Juvenile Justice Board that if the petitioner was released on bail, there was every likelihood that he might be exposed to moral or psychological danger. This finding, it appears, is based upon only one circumstance and that is that the petitioner had been instigated into the alleged offence by an adult person by the name of Suresh. The learned counsel for the petitioner pointed out that there was no basis before the Juvenile Justice Board as also the court below on which they could come to the conclusion that if the petitioner was released on bail there was every likelihood that he would be exposed to moral or psychological danger. A photocopy of the Social Investigation Report submitted to the Juvenile Justice Board by the Probation Officer was placed before me and I have gone through it with some degree of care. There are several phrases which pertain to the present petitioner which read as under:-

'normal religious feeling'; 'no delinquency regarding members of family'; 'parents have normal affection and strong cohesive feeling'; 'protective and over confidence was observed on the part of juvenile's behavior'; 'normal, matured, sincere'; 'creative and extrovert traits'.

5. The only observation that possibly went against the petitioner was to the following effect:-

'He added that he was instigated by Suresh who had been (sic) escaped/left. Bus at Ghaziabad (U.P.).'

6. The recommendation of the Probation Officer was that the petitioner needed strict supervision and follow-up. Reading this report, it does appear that the petitioner had been misled by the said Suresh who is no longer in contact with the petitioner or his family. Furthermore, there is no indication in the social

investigation report that if the petitioner is released such release would be likely to bring him into association of known criminals or expose him to moral, physical or psychological danger or his release would defeat the ends of justice.

7. In my view, the exception carved out for not releasing a juvenile on bail under Section 12 of the Juvenile Justice Act, 2000 is not made out in the present case. therefore, the mandatory provision of Section 12 has to be followed and the petitioner is required to be released on bail. The learned counsel for the petitioner submits that the petitioner's parents are ready to undertake that they shall take full care and keep a strict vigil over the petitioner, once he is released on bail. Affidavits to this effect shall be filed within four days.

8. In this view of the matter, the petitioner is directed to be released on bail upon the mother of the petitioner furnishing a personal bond in the sum of Rs.5,000/- with one surety of the like amount to the satisfaction of the concerned court.

This application stands disposed of.

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