

Kalyan Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Mar-23-1981

Reported in : 1981CriLJ1472; 1981()WLN479

Judge : G.M. Lodha, J.

Appellant : Kalyan

Respondent : State of Rajasthan

Judgement :

ORDER

G.M. Lodha, J.

1. Accused petitioner Kalyan has filed this bail application under Section 439, Cr.P.C. in FIR 11/81, in which he has been arrested, and charged with offence under Section 376, I.P.C. The prosecution case is that accused committed rape with a girl Mst. Ram Pyari who happens to be 14 years of her age. The girl received injuries and became unconscious. 'Ghaghari' and underwear of the girl were found bloodstained.

2. During the course of investigation, a bail application was moved before the Sessions Judge, Kota, who has rejected it on February 6, 1981.

3. Shri Ravi Kasliwal, the learned Counsel for the accused-petitioner submitted that the accused is a boy of 16 years of age and is, therefore, entitled to bail under Section 18 of the Rajasthan Children Act, 1970, hereinafter referred to as 'the Act of 1970'.

Section 18 of the Act of 1970 reads as under:

18. Bail and custody of Children

(1) When any person accused of a bailable or non-bailable offence and apparently a child is arrested or detained or appears or is brought before a children's Court, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Central Act 5 of 1898) 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 appears reasonable grounds for believing that the release is likely to bring him into association with any notorious criminal or expose him to moral danger or that his release would defeat the ends of justice.

(2) when such person having been arrested is not released on bail under subsection (1) by the officer-in-charge of the police station, such officer shall cause him to be kept in an observation home in the prescribed manner (but not in a police station or jail) until he can be brought before a Children's Court.

(3) when such person is not released on bail under Sub-section (1) by the Children's Court, it shall instead of committing him to prison, make an order sending him to an observation home for such period during the pendency of the inquiry, regarding him as may be specified in the order.

4. Mr. Mathur, the learned Public Prosecutor contested the bail application. According to him accused is guilty of very heinous offence of committing rape with a girl of 14 years while she was going to the field. He also contested the age and submitted that according to the medical report, accused is between 17 to 25 years.

5. Having heard the learned Counsel for the petitioner and the learned Public Prosecutor, the first question which requires consideration, is whether the provisions of Section 18 of the Act of 1970 are applicable in the present case or

not. The medical report received in the case file shows that the accused is between 17 years to 25 years of age. The Radiologist's finding according to Shri Kasliwal, shows that the accused is about 16 years of age.

6. Mr. Kasliwal's contention that the X-ray report should be given preference over other reports of clinical medical examination may have some force in a given case. However, the basic fact remains that all medical reports can give approximate age. It is difficult, at this stage, to give a positive finding that the accused-petitioner, Kalyan, is below 16 years of age. Even the report of the Radiologist on which reliance is placed by Shri Kasliwal, fails to mention that the accused petitioner is below 16 years of age. All that has been mentioned, is that the accused is about 16 years of age.

7. I am, further, of the opinion that even if an accused is about the age of 16 years, in a heinous case of rape of the present nature, where the girl is alleged to have been bleeding profusely and became unconscious, the accused is disentitled for any liberal consideration.

8. Even under Section 18 of the Act of 1970, there are provisions to keep a child in observation home. Further, Sub-clause (1) gives a discretion to the magistrate concerned not to release such an accused on bail in case he is convinced that such release would defeat ends of justice. That being so, the present case is one of that category where the release of accused, who is guilty of heinous offence of rape in such a merciless and ruthless manner, the benefit of Section 18 of the Act of 1970 should not be given and the accused petitioner comes in the last category where grant of bail would defeat ends of justice.

9. In view of the above, I am of the opinion that the accused petitioner Kalyan is not entitled to bail and consequently, the bail application is hereby rejected at this stage. However, when girl is examined or some other circumstances are changed, the accused would be at liberty to move fresh bail application.