

Gopal Sharma Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Oct-21-2003

Reported in : RLW2004(1)Raj450; 2004(1)WLC722

Judge : N.N. Mathur, J.

Acts : Juvenile Justice (Care and Protection of Children) Act, 2000 - Sections 2;
[Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 439; Indian Penal Code (IPC) - Sections 302

Appeal No. : S.B. Criminal Revision Petition No. 274 of 2003

Appellant : Gopal Sharma

Respondent : State of Rajasthan

Advocate for Def. : D.D. Kalla, Public Prosecutor

Advocate for Pet/Ap. : Anil kaviraj, Adv.

Disposition : Revision dismissed

Judgement :

N.N. Mathur, J.

(1). The instant revision is preferred against the order of the Sessions Judge, Udaipur dated 26.02.2003 dismissing the appeal against the order of the Principal

Magistrate, Children Court, Udaipur dated 14.02.2003 refusing to release the applicant on bail.

(2). The brief facts giving rise to the instant revision petition are that in the intervening night of 02.12.2002 and 03.12.2002 murder of a foreign lady tourist namely Lee Ching took place in a hotel in the locality known as Ghanghor Ghat in the city of Udaipur. It is alleged that the petitioner who is a guide by profession was also staying with the deceased. On 2.12.2002 they were seen retiring to room No. 301 after taking dinner. However, in the morning of 3.12.2002 till 10:00 A.M. when the rooms was not opened and there was no response from inside, it was opened by a duplicate key. The dead body of the foreign tourist was found lying in the room. The petitioner was found missing. The F.I.R. was lodged at Police Station, Ghantaghar. After usual investigation Police laid charge-sheet against the petitioner for offence under Section 302 I.P.C.

(3). As per the school certificate, the applicant was born on 29.06.1985, as such on the date of the incident he was 17 years and 6 months old. Thus, he was held to be a juvenile or child within the meaning of Sub-clause (k) of Section 2 of the Juvenile Justice (Care and Protection of Children) Act, 2000. The learned Sessions Judge by order dated 13.02.2003 sent the accused for trial before the Principal Magistrate, Children Court, Udaipur. The applicant filed application before the Juvenile Court for release on bail. In the opinion of the learned Magistrate the release of the accused would defeat the ends of justice and as such rejected the bail application by order dated 14.02.2003. The petitioner preferred an appeal against the said order to the court of Sessions Judge under Section 52 of the Act. The learned Sessions Judge rejected the application by order dated 26.02.2003. Hence this revision.

(4). It is contended by Shri Anil Kaviraj learned counsel for the petitioner that both the courts below have committed gross illegality in rejecting the bail application of the petitioner in disregard to the mandatory provision of Section 12 of the Act of 2000. It is submitted that the gravity of offence cannot be a ground to reject the bail application. The learned Public Prosecutor has supported the judgment of the learned Sessions Judge.

(5). I have considered the rival contentions. The Juvenile Justice (Care and Protection of Children) Act, 2000 has been enacted with an object 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 development needs, and by adopting a child-friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation through various institutions established under this enactment. It would be apt to refer some of the relevant provisions of the Act of 2000 having material bearing on the controversy. Sub-clause (K) of Section 2 defines in juvenile or child which reads as follows:-

(k) 'Juvenile' or 'child' means a person who has not completed eighteenth year of age;'

Section 12 of the Act reads as follows:-

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 incharge 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.'

(6). The command of Section 12 is that when any accused of bailable or non-bailable offence and apparently juvenile is arrested or detained or appears or is brought before a Board, the said person shall, notwithstanding anything contained in the Code of Criminal Procedure or any other law for the time being in force, be released on bail with or without surety, the exception to the said rule has been carved out as follows:-

'(i) if there appears reasonable grounds for believing that the release is likely to bring him into association with any known criminal or;

(ii) expose him to moral, physical or psychological danger or; (iii) that his release would defeat the ends of justice.'

(7). The Sub-clause (2) further provides that in case the juvenile is not released on bail under Sub-clause CO the juvenile shall be kept in the observation home in the prescribed manner. That it clearly emerges that the provisions of Section 12 of the Act are mandatory in nature and as a rule it is obligatory on the children court to release juvenile on bail with or without surety. Unless his case falls in any of the three exceptions i.e. apprehension of the accused to come in contact with the known criminal or his exposure to moral, physical or psychological danger or in the opinion of the court his release would defeat the ends of justice.

(8). In the instant case the bail application has been refused not only because that the applicant is facing trial on a serious charge of murder but also the special circumstance that his act is prejudicial, to image of the country in the world, adversely affecting the tourism business. The tourists move in the country on the guidance and faith of guide. A betrayal to foreign tourist is betrayal to the country, projecting a bad image in the eye of the world. Thus, the view taken by both the courts below cannot be said to be erroneous in considering that the case of the petitioner falls in the exceptional category provided under Section 12 of the Act. The finding of fact recorded by both the courts below does not call for interference by this court in exercise of the revisional powers.

(9). Consequently, the revision petition being devoid of merit, stands dismissed.

