

Prakash Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Dec-05-2005

Reported in : 2006CriLJ1373; RLW2006(1)Raj538

Judge : H.R. Panwar, J.

Acts : Juvenile Justice (Care and Protection of Children) Act, 2000 - Sections 2, 12, 12(1), 52 and 53; Indian Penal Code (IPC) - Sections 376; [Code of Criminal Procedure \(CrPC\) , 1973](#)

Appeal No. : S.B. Criminal Revision Petition No. 915 of 2005

Appellant : Prakash

Respondent : State of Rajasthan

Advocate for Def. : Ashok Upadhyay, Public Prosecutor

Advocate for Pet/Ap. : Devi Lal R. Vyas, Adv.

Disposition : Revision petition allowed

Judgement :

H.R. Panwar, J.

1. This criminal revision petition under Section 53 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (for short, 'the Act' hereinafter) is directed

against the order dated 7.10.2005 passed by the Sessions Judge, Jodhpur (for short, 'the Appellate Court' hereinafter), whereby the appeal filed by the delinquent juvenile through his father under Section 52 of the Act against the order dated 1.10.2005 passed by the Juvenile Justice Board, Jodhpur on an application under Section 12 of the Act declining to release the juvenile delinquent on bail, was dismissed. Aggrieved by the orders impugned, the juvenile delinquent has filed the instant criminal revision petition.

2. I have heard learned Counsel for the petitioner and the Public Prosecutor for the State. Perused the orders impugned passed by the Courts below.

3. The petitioner has been declared juvenile by the Juvenile Justice Board and is facing trial for the offence under Section 376, IPC in a case arising out of the FIR No. 38/2005, Police Station, Jamba, district Jodhpur. The petitioner was arrested in the aforesaid crime report on 24.8.2005 and since then he is in judicial custody. The juvenile delinquent moved an application under Section 12 of the Act seeking bail, which came to be dismissed on the ground that the juvenile delinquent is an accused of a case of rape and is having the rural back-ground and, therefore, he is likely to expose the moral, physical and psychological danger. Against the order of the Juvenile Justice Board, the juvenile delinquent filed an appeal which came to be dismissed by the Appellate Court on the ground of gravity of gravity of the offence of rape.

4. Learned Counsel for the juvenile delinquent submits that normally the juvenile delinquent should be released on bail unless there is some evidence that his release would defeat the ends of justice, or is likely to bring him in the association with some known criminal. Learned Public Prosecutor supports the orders impugned and submits that the offence of rape is heinous and, therefore, the Courts below rightly declined to release him on bail.

5. I have given my thoughtful consideration to the rival submissions made by the learned Counsel for the parties.

Sub-clause (k) of Section 2 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (for short, 'the Act') defines 'juvenile' or 'child', which reads as

under:-

Section 2(k) 'Juvenile' or 'child' means a person who has not completed eighteenth year of age.'

Section 12 of the Act reads as under:- .

Section 12. Bail to 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.

6. From the perusal of Section 12 of the Act, it is clear that a delinquent juvenile ordinarily has to be released on bail irrespective of nature of offence alleged to have been committed by him, unless it is shown by evidence that if he is released on bail, there appear reasonable grounds for believing that the release of delinquent juvenile 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. Section 12 of the Act is a special provision inducting the Courts from refusing bail to a delinquent juvenile except for the reasons stated in

the section itself, i.e., if he be so released there are reasonable grounds for believing that he will come 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.

7. At the time of consideration of bail under Section 12 of the Act, the merit or nature of offence has no relevancy. The language of Section 12 of the Act, using the word 'shall' is mandatory in nature and providing non-obstante clause by using the expression 'notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time-being in force be released on bail' shows the intention of the Legislature to grant bail to the delinquent juvenile offender by releasing him on bail who is arrested or produced before a Court, however, with exception to release him on bail if there are reasonable grounds for believing that his release him on bail if there are reasonable grounds for believing that his 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. It is for the prosecution to bring on record such material while opposing the bail and to make out any of the grounds provided in this section which may persuade the Court not to-release the juvenile on bail.

8. The Act is beneficial and social-oriented legislation which needs to be given full effect by all concerned whenever the case of juvenile comes before them. In absence of any material or evidence of reasonable grounds to believe that the delinquent juvenile, if release on bail, is likely to come into association with any known criminal or expose him to moral, physical or psychological danger, it cannot be said that his release would defeat the ends of justice. On the contrary, keeping in view the legislative intent in enacting the Act, the juvenile offender deserves to be released on bail.

9. Consequently, the revision petition is allowed. The Order of the Juvenile Justice Board, Jodhpur dated 1.10.2005 as well as the order of the Appellate Court dated 7.10.2005 are hereby set aside and it is directed that the delinquent juvenile Prakash S/o Arjun Ram Bishnoi be released on bail, provided his guardian

furnishes a personal bond in the sum of Rs. 10,000/- with a surety in the like amount to the satisfaction of the Principal Magistrate, Juvenile Justice Board, Jodhpur with the stipulation that on all the subsequent dates of hearing, he shall produce the delinquent juvenile before the said Board or any other Court during pendency of the inquiry and his guardian shall keep proper look-after of the juvenile delinquent and keep him away from the company of known criminals.

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