

**Badri Vs. State of Rajasthan**

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**SooperKanoon Citation :** [sooperkanoon.com/770100](http://sooperkanoon.com/770100)

**Court :** Rajasthan

**Decided On :** Jan-07-2009

**Reported in :** 2009(2)WLN72

**Judge :** Manak Mohta, J.

**Appellant :** Badri

**Respondent :** State of Rajasthan

**Disposition :** Petition allowed

**Judgement :**

**Manak Mohta, J.**

1. Heard.

2. By way of this revision petition, the petitioner has assailed the validity and correctness of orders passed by the Courts below refusing to enlarge the juvenile on bail.

3. Briefly stated that the facts of the case as revealed from the record is that on 08.10.2008 at the instruction of her husband-Sanwara, the prosecutrix-Debi went to village Kajodia (her parental village) for collecting due amount of Rs. 500/- from one Jagdish (maama of the prosecutrix), who stated that he had spent the amount in the 'Sagra Ji Ka Jagaran' and if she stays in the night he would arrange for the

amount in the tomorrow morning, so on the saying of her husband and insistence of Jagdish, the prosecutrix stayed at village Kajodia. In the night at 10.00 p.m. while she was chanting songs in 'Jagaran', at that time, the accused Ramdev and Badri (Juvenile) told Debi that they would leave her at village Rahad, so the prosecutrix accompanied them on foot as Ramdev (being her cousin brother). On the way, Ramdev started outraging her modesty, thereafter accused-Badri caught hold of her hands and Ramdev made her fall on the ground and committed forcible intercourse with her. Thereafter the juvenile Badri also committed rape with her. When she tried to raise shouts, her mouth was closed by hands and she was beaten by belt and teeth-bites were caused on her face. Further injury was also caused to her private parts.

4. On the bass of the aforesaid report lodged on 09.10.2008 a case vide FIR No. 167/2008 for the offence under Section 376(2)(g) and 366 I.P.C. was registered at P.S. Phoolia Kalan and the investigation commenced.

5. It is stated by the learned Counsel that for the juvenile 03.01.2009 is the date fixed for filing challan and against the other co-accused person challan has already been filed. The challan papers were submitted for kind perusal. An application was moved before the J.J. Court for releasing the juvenile on bail but that was rejected, later on appeal was also rejected by the impugned order, thus, this revision was preferred before this Court. Notice of this revision petition was given to the learned Public Prosecutor.

6. During the course of arguments learned Counsel for the petitioner submitted that the both the Courts below have erred in rejecting the prayer for the release of delinquent on bail on the count that the offence alleged against the juvenile is of serious nature and further taking into consideration the facts of the case, it was observed that to release him on bail is not in the interest of the delinquent himself. It was urged that in case of a juvenile the reasons assigned cannot be good grounds for rejection of the bail application. Learned Counsel for the petitioner further stated that as per Section 12 of the J.J. Act, a delinquent's prayer for his release on bail could only be rejected in case the release of juvenile is likely to come in association with known criminals or expose him to moral, physical or

psychological danger or that his release would defeat the ends of justice but no such material has been produced by the prosecution so that any adverse inference can be drawn, therefore, the orders passed by the Courts below are not sustainable and are liable to be quashed and set aside.

7. It was urged that in case of a juvenile the welfare of juvenile is to be seen, that is of paramount consideration and that is giving the custody of juvenile to his father. In this respect my attention was drawn towards the legal position laid down in Section 12 of the Juvenile Justice Act and further submitted that the prosecution has failed to produce any evidence that in case of release of juvenile on bail he would come in association of known criminals. Further, it was argued that on merits also the case is not sustainable. As per the record the incident took place on 08.10.2008 whereas the FIR of the incident was lodged on 15.10.2008. The prosecutrix is a major and married lady aged 20 years and the story as narrated by her is not plausible. The juvenile has been falsely implicated in this case with ulterior motive. Learned Counsel also referred judicial precedent in support of his contentions and on the strength of these submissions, a prayer was made to allow the revision petition and to quash and set aside the impugned orders passed by the Courts below and to release the juvenile on bail.

8. Learned Public Prosecutor opposed the revision stating that the delinquent should not be released on bail.

9. I have considered the rival submissions and have perused the material available on record and the relevant Section 12 of the J.J. Act. From the perusal of the Section 12 of the J.J. Act, the position is very clear that bail could only be refused when the Court comes to the conclusion that there are reasonable grounds for believing that the release of 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. From the perusal of the record such type of material is lacking. The learned Courts below have not appreciated the things in the light of the law laid down in Section 12 of the J.J. Act, therefore, the orders passed by the Courts below are not sustainable. In the case of a juvenile it is not much relevant to look into the gravity of offence. I have also perused the

record and considered the other contentions raised with regard to the merit of case but as they are not relevant, therefore, no comment is being made.

10. In view of the aforesaid discussion, the revision petition is allowed. The order of Juvenile Justice Board as well as the appellate Court refusing to release the delinquent on bail are hereby quashed and set aside and it is directed that delinquent-Badri S/o Mewa be released on bail provided his father furnish a personal bond in the sum of Rs. 30,000/- alongwith an undertaking that he will keep his son away from known criminals and shall also restrain him from carrying out any anti-social activities, with two sound and solvent sureties of Rs. 15,000/- each to the satisfaction of Juvenile Justice Board with the stipulation that on all the subsequent dates of hearing he will produce the delinquent before the said Board or any other Court during the pendency of trial and shall keep him away from criminal activities and will take look after of the delinquent.

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