

Dinesh Kumar Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jan-12-2009

Reported in : 2009(2)WLN378

Judge : Manak Mohta, J.

Appellant : Dinesh Kumar

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. The allegation against the juvenile is that he was caught alongwith co-accused while transporting 7 Qunital and 80 Kg Poppy Husk ('Dodapost') in a 'Tata Sumo Car' having fabricated number plate. The juvenile was detained on the spot and was sent to Observation Home, however, on 27.12.2005 he absconded and remained absconding for three years. He has now become major.

4. An application under Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2001 (in short 'J.J. Act' ahead) was moved before the J.J. Court for releasing the juvenile on bail but that was rejected mainly on the ground that the juvenile remained absconding for a considerable period. Later on, the appeal was also rejected by the impugned order, thus, the revision has been preferred before this Court. Notice of this revision petition was given to the learned Public Prosecutor.

5. During the course of arguments learned Counsel for the petitioner submitted that the both the Courts below have erred in rejecting the prayer for releasing the delinquent on bail on the count that he fled away from the Observation Home and did not turn up for three years. He has now been detained and sent back to Observation Home. It was urged that in case of a juvenile the reasons assigned cannot be good ground 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 the 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 liable to be quashed and set aside.

6. 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 J.J. 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. The juvenile has been falsely implicated in this case with ulterior motive. It was argued that it is a case wherein the juvenile will be governed by J.J. Act as they are having an over-riding effect to the provision of N.D.P.S Act and, therefore, the bar of Section 37 not releasing the accused on bail is not applicable in this case. Learned Counsel also referred judicial precedent given in the case of Bhanwar Lal v. State of Rajasthan reported in Cr. L.R. (Raj.) 254 in

support of this contentions and on the strength of these submissions a prayer was made to follow the revision petition and to quash and set aside the impugned orders passed by the Courts below and to release the juvenile on bail.

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

8. I have considered the rival submissions and have perused the material available on record and the relevant Section 12 of the J.J.Act.

9. 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 be 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 of the appellate Court refusing to release the delinquent on bail are hereby quashed and set aside and it is directed that delinquent-Dinesh Kumar S/o. Dungra Ram be released on bail provided he himself furnishes a personal bond of Rs. 30,000/- with an undertaking that he will keep away from the known criminals and criminal activities with two sound and solvent sureties of Rs. 15,000/- each (one of which should be of his father with an undertaking that he will keep his son away from known criminals and shall also restrain him from carrying out any anti-social activities) to the satisfaction of Juvenile justice Board with the stipulation that on all the subsequent dates of hearing he will appear before the said Board or any other Court during the pendency of trial.

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