

Arjun @ Gogi Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Nov-21-2008

Reported in : RLW2009(2)Raj1009

Judge : Manak Mohta, J.

Appellant : Arjun @ Gogi

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 release the delinquent on bail.

3. There is allegation of committing murder against the delinquent. As per FIR, on 26.8.2008 Shailesh @ Shunti alongwith his friends were playing cricket at Rajeev Primary School, Ward No. 9, Sector-12, Hanumangarh. At that time, some altercation took place between Shailesh and Arjun @ Gogi, on which, Arjun @ Gogi inflicted a bat blow on the head of Shailesh, as a result of which Shailesh

became unconscious and fell down on ground, thereupon, Robin Seni, Mahesh, Gautam etc., immediately informed the family members of victim, on which, Shailesh was rushed to Bombay Hospital, where he was declared dead.

4. On this report, a case vide FIR No. 553/08 was registered at P.S. Hanumangarh Junction for the offence under Section 302, I.P.C. and the investigation commenced.

5. The police after completion of investigation, filed charge-sheet against the petitioner for the aforesaid offence under Section 302 IPC, however, considering the age of delinquent at the time of occurrence as below 18 years (his date of birth being 28.8.1990), he was detained and produced before the J.J. Court, where the application Filed under Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (in short 'J.J. Act' ahead) by the father on behalf of juvenile was rejected and then the appeal against the said order, too has been dismissed by the learned Sessions Judge, hence this revision petition has been filed.

6. During the course of arguments, learned Counsel for the petitioner submitted that the Courts below have erred in rejecting the prayer for the release of delinquent on bail only on the count that the offence alleged against the juvenile is of serious nature and during the course of time he has crossed the age of 18 years. Further, taking into consideration the facts of the case, it was observed that to release him on bail is not in his interest. It was urged that in case of a juvenile the reasons assigned cannot be a 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 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 further contended that the incident took place on 26.8.2008 and admittedly the petitioner was juvenile on that date as his date of birth being 28.8.1990, as such, the police itself has filed challan in Juvenile Court and the

delinquent should not be kept in Central Jail with hardened criminals as has been kept in this case. It was stated that from the facts and other material brought on record, no offence under Section 302 IPC, is made out against him. Neither there was any intention to kill nor he was having any knowledge of impact of that hurt. The petitioner is in custody since 28.8.2008, after investigation challan has been filed, no further investigation is pending and the trial of the case is likely to take a long time. Thus, it was prayed that the revision petition may kindly be allowed and the delinquent may be enlarged on bail. Learned Counsel for the petitioner in support of his contention cited the decision of this Court given in the case of Jeetu Ram through his father natural guardian Fusaram S/o. Manga Ram v. State of Rajasthan reported in 2005 (1) RDD 340 and decision of Hon'ble Apex Court given in Pratap Singh v. State of Jharkhand and Anr. : 2005 CriLJ3091 . It was urged that in that case, the Hon'ble Apex Court has observed that the reckoning date for the determination of the age of the juvenile is the date of an offence and not the date when he is produced before the authority or in the Court.

8. On the basis of the aforesaid submission again a prayer was made to accept the revision petition and to enlarge the delinquent on bail during the pendency of trial. It was also urged that during the course of time the delinquent has become major, as such, a memo of appearance has been filed on his behalf.

9. Learned Public Prosecutor opposed the revision petition.

10. I have considered the rival submissions and have perused the material available on record, the citations produced from the side delinquent and the relevant Section 12 of the J.J. Act.

11. 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 missing. 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. It is also settled law that the age of delinquent is to be seen at the time of commission of offence. The finding of learned Sessions Judge in this respect is, therefore, not sustainable.

12. In view of the aforesaid discussion, the revision petition is allowed. The orders 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 the petitioner Arun @ Gogi S/o. Rajeev @ Sanjeev be released on bail provided he furnishes a personal bond in the sum of Rs. 30,000/- alongwith an undertaking that he will keep himself away from criminals and also restrain himself from any other sort of anti-social activities, with two sound and solvent sureties of Rs. 15,000/- each (of which one should be of his father) to the satisfaction of the Juvenile Justice Board with the stipulation that on all the subsequent dates of hearing, the delinquent will produce himself before the said Board or any other Court during the pendency of trial and shall keep him away from criminal activities and his father shall look after the delinquent and shall keep him away from the company of criminals.