

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL REVISION APPLICATION (FOR REGULAR BAIL) NO. 1287
of 2024

FOR APPROVAL AND SIGNATURE:

HONOURABLE MS. JUSTICE GITA GOPI Sd/-

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	No
2	To be referred to the Reporter or not ?	No
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

PRATIPALSINH GUNVANTSINH JADEJA THRO GAJRABA GUNVANTSINH
JADEJA
Versus
STATE OF GUJARAT

Appearance:

MR P P MAJMUDAR(5284) for the Applicant(s) No. 1

MS KRINA P CALLA, ADDITIONAL PUBLIC PROSECUTOR for the
Respondent(s) No. 1CORAM: **HONOURABLE MS. JUSTICE GITA GOPI**

Date : 28/08/2024

ORAL JUDGMENT

- RULE** returnable forthwith. Learned Additional Public Prosecutor waives service of notice of Rule on behalf of respondent – State.

2. This Revision Application has been filed by the child in conflict with law (hereinafter referred to in short as 'CCL'), through his mother as Guardian, under Section 102 of the Juvenile Justice (Care & Protection of Children) Act, 2015 (hereinafter referred to in short as the 'JJ Act') challenging the order dated 06.08.2024 passed by the learned 2nd Additional Sessions Judge, Devbhumi Dwarka at Khambhalia in Criminal Appeal No.48 of 2024 and the order dated 24.07.2024 passed by the learned Principal Magistrate, Juvenile Justice Board, Khambhalia in Criminal Miscellaneous Application No.283 of 2024 whereby, the bail application/s of the child/juvenile in conflict with law came to be rejected.
3. The First Information Report (FIR) being C.R. No.11185001240661 of 2024 was registered on 11.07.2024 with Bhanvad Police Station, District Devbhumi Dwarka for the offences punishable under Sections 108, 115(2), 308(5) and 54 of the Bharatiya Nyaya Sanhita, 2023 (hereinafter referred to in short as 'BNS'). The CCL is aged about 17 years.

4. The FIR notes that the accused No.1 – Vishal Jadeja Darbar of M/s. V.M. Metals had to recover an amount of Rs.20,00,000/- from the deceased – Ashokbhai Jetabhai Dhuva. Hence, with a atrocious demand of money and forcibly and under the threat the accused No.1 had got a Note executed in writing. The deceased Ashokbhai had to recover an amount of Rs.5,53,000/- from Vishal Pragda, Samarpan Cell who was not returning the money since the last five years and was harassing the deceased. Because of this forcibly and atrocious demand of money, the deceased Ashokbhai, his wife Liluben, son Jignesh and daughter Kinjal committed suicide.
5. Learned Advocate for the applicant Mr. P.P. Majmudar submitted that both the Courts have failed to examine the role of the child in conflict with law (CCL) in the alleged offence and has failed to appreciate that it is a child like inquisitiveness which is alleged to be recording of the act in the video and no such intention would be there of CCL who would not know the consequence of his act.

6. The offence is registered under Section 308(5) of BNS which is regarding extortion and more specifically, who commits extortion by putting any person in fear of death or of grievous hurt to that person or to any other, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. Section 108 of BNS is regarding abetment of suicide and Section 115(2) of BNS is with regard to causing voluntary hurt.
7. It is further submitted that the allegations are that because of the atrocious demand of money, the deceased was forced to commit suicide. It is alleged that the deceased Ashokbhai, wife Liluben, son Jigar and daughter Kinjal committed suicide by consuming poisonous medicine. The allegations qua the applicant are of abetting in the commission of suicide. It is further submitted that the CCL had picked up a shovel which was lying in the factory and had given to the accused No.1 and the accused No.1 had beaten the deceased Ashokbhai with a shovel while the specific allegations is that under force and threat of accused No.1, the deceased

Ashokbhai and his son Jigar were forced to sign on a note and that act was videographed by the CCL in his mobile and the whole incident was captured in the CCTV Footage.

8. On the other hand, learned Additional Public Prosecutor submitted that the Section which appears to be invoked against the CCL is Section 54 of BNS which is regarding presence of abettor in the offence that has been committed. Section 54 of BNS reads as under :-

“Section 54 Abettor present when offence is committed. - Whenever any person who is absent would be liable to be punished as an abettor, is present when the act or offence for which he would be punished in consequence of the abetment is committed, he shall be deemed to have committed such act or offence.”

9. It is further submitted by learned Additional Public Prosecutor that the act of the applicant may appear as only of recording of the offences in the form of a video, but if the FIR is read minutely, then the act of the CCL is of abetting the offence which gets clarified in the CCTV Footage.

10. Heard the submissions canvassed and perused the records of the case. In an application filed for bail by a CCL, Section 12 of the JJ Act is required to be taken into consideration. Section 12 of the JJ Act mandates that the juvenile, in a bailable or non-bailable offence, is arrested or detained or appears or brought before the Court, has to be released on bail with or without surety or place under the supervision of the Probation Officer or under the care of any fit institution of fit person but 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. Both the Courts below have not examined the aspect by calling upon the Report of the Probation Officer. Further, both the Courts have also have failed to note as to whether the CCL would be exposed to moral, physical or psychological danger and to examine these aspects, the Report was required to be called upon. It was also required to be considered whether the CCL's release would defeat the ends of justice.

11. The role and the allegations which have surfaced in the FIR is that the co-accused were demanding money from the deceased Ashokbhai. The family could not withstand the atrocious demand and the act of the co-accused is of getting the note in writing executed with regard to the amount due. The role that has been attributed to the CCL is that he had picked up a shovel from the factory and had given it to the accused No.1 and with the shovel, the accused No.1 had beaten the deceased. It is not the case of the prosecution that the CCL had beaten the deceased and the role attributed to the CCL is that of videographing / recording the entire event. The recording would be rather a supporting evidence for the prosecution which would help the prosecution in assisting the learned trial Court in deciding the matter.

12. Section 54 of BNS is with regard to presence of the person when the act or offence is committed. Section 54 is a deeming provision to consider that when the person is present, he would be liable to be punished as an abettor and would be punished for

the consequences of the abetment. Here the CCL had not committed such an act or offence. Both the Courts below are required to call upon the psychologist's Report to examine the fact as to whether the deeming provision under Section 54 of BNS could be attracted qua the CCL and whether the presence of CCL at the place of offence was intentional. The CCL is not related with the other co-accused and as per the application, the CCL was going at M/s. V.M. Metal which is of the main accused – Vishal Jadeja Darbar to learn about the work and co-incidentally had gone with the accused at the Factory. The act which is specifically attributed to the CCL is of recording the writing which was being executed while the alleged act of suicide of the deceased Ashok and his family members was committed in an open space near the Dharagad Railway tracks. Both the learned Courts were required to consider the act of CCL in connection with the facts as alleged. There is no direct involvement of CCL to consider as criminal culpability. Further CCL's detention would affect him mentally, physically and emotionally and his

development would get obstructed.

13. Considering the role of the child in conflict with law, discretion is exercised in favour of the child to enlarge him on bail.
14. In view of the observations and discussion made herein above, the present application succeeds and is accordingly, allowed. The orders impugned in this revision of the 'JJ Board' and the 'Children's Court', referred herein above, are set aside, i.e. the order dated 06.08.2024 passed by the learned 2nd Additional Sessions Judge, Devbhumi Dwarka at Khambhalia in Criminal Appeal No.48 of 2024 and the order dated 24.07.2024 passed by the learned Principal Magistrate, Juvenile Justice Board, Khambhalia in Criminal Miscellaneous Application No.283 of 2024.
15. The child in conflict with law is ordered to be released on bail in connection with the aforesaid FIR on his mother, executing a personal bond in sum of Rs.10,000/- (Rupees Ten Thousand only) before the JJ Board.

16. It is directed that the Probation Officer shall monitor the conduct of the child in conflict with law and shall quarterly submit the report before the Trial Court. Moreover, if the Probation Officer considers any necessity of sending the child for any behavior modification then necessary therapy and psychiatric support be provided to the child in conflict with law.
17. The mother of the child to ensure that the child will not fall into bad company.
18. Rule is made absolute to the aforesaid extent. Direct service is permitted. Registry to communicate this order to the concerned Court/authority by Fax or Email forthwith.

Sd/-

(GITA GOPI, J)

CAROLINE