

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.2282 OF 2021

Shubham @ Bablu Milind .. Applicant
Suryavanshi

Versus

The State of Maharashtra .. Respondent

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Ms.Sahana Manjesh for the Applicant.

Ms.A.A.Takalkar, A.P.P. for the State/Respondent.

PI Vijay Madage, attached to Borivali Police Station, present.

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CORAM: BHARATI DANGRE, J.

DATED : 21st OCTOBER, 2022

P.C:-

1. Heard Advocate Ms.Sahana Manjesh for the applicant, who is a juvenile in conflict with law (CCL) and seeks his release on bail in C.R.No.141 of 2020, registered with Borivali Police Station. The applicant is aged 17 years 11 months and 6 days and is one of the accused charged for committing murder. He came to be arrested on 13/03/2020 and seeks his release by taking benefit of the statutory provision in form of Section 12 of the Juvenile Justice (Care and Protection of Children)

Act, 2015 (for short, “**The J.J. Act**”).

2. Learned counsel for the applicant would vehemently submit that the incident complained of, is alleged to have taken place on 12/03/2020 and the applicant came to be arrested on 13/03/2020, when he was a juvenile. On completion of investigation, charge-sheet was filed under Section 302 read with Section 34 of I.P.C. and the Juvenile Justice Board (for short, “**The JJB**”), directed the applicant to be tried as an adult. He preferred an application before the Sessions Court at Dindoshi, who rejected his application on wrongful consideration of Section 12 by holding that, since he was tried to be an adult, he was not entitled to be released on bail.

Learned counsel would place reliance upon the mental health report of the applicant as well as the report of the CCL from the Probation Department and also the preliminary assessment report of the applicant.

Learned counsel would also place reliance upon various authoritative pronouncements, including the decision of the Delhi High Court in the case of the *CCL ‘A’ Vs. State (NCT of Delhi)*¹, the decision in case of the *Re-A Juvenile Vs. State of*

¹ 2021 Cri.L.J.1251

*Orissa*² and an order passed by this Court in Bail Application No.3838 of 2021, to support her submission that the applicant, being juvenile, is entitled for being extended the protection under Section 12 of J.J.Act.

Per contra, learned A.P.P. would strongly oppose the application and submit that the date of birth of the applicant is 06/04/2002 and on being arrested, he was produced before the JJ Board, which directed to retain the applicant in the Observation Home at Dongri. Inviting my attention to the grave role attributed to the present applicant, learned A.P.P. would submit that at the time of commission of offence, the applicant was aged 17 years, 11 months and 24 days. She would submit that in terms of Section 15 of J.J.Act, which specifically provide that in case the child is between 16 to 18 years and he has committed a heinous offence, then the JJ Board may conduct a preliminary assessment in order to assess the maturity level of the child, his mental and his physical capacity to conduct such an act and it may take the aid of experienced psychologists and psycho-social workers to reach a conclusion, whether he is to be tried as a child or as an adult. She would submit that in case the Board is of the

² 2009 Cri.L.J. 2002

opinion that the child is not to be tried as an adult, it would pass the order as per the guidelines issued under Section 18 of the Act.

Learned A.P.P. would rely upon the said guidelines, which are reproduced in the affidavit and read thus :-

“18. Procedure to be followed in respect of sections 21,22,23,24, 25 and 26 of the Act.-

(3) The offences against a juvenile in conflict with law or a child specified in sections 23, 24, 25 and 26 shall be either bailable or non bailable besides being cognizable under the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) and the procedures shall apply on the Police, the Board and the concerned authorities and functionaries accordingly.”

The contention of the Applicant that he being a juvenile should compulsorily be released on bail and that he cannot be detained under any circumstances does not hold good and is not maintainable under the provisions of law.

That proviso to sub-section (1) of Section 12 of the Juvenile Justice Act, 2015 mentions in clear terms that, “Provided that such person shall not be so released if there appears reasonable grounds for believing that the release is likely to bring that person into association with any known criminal or expose the said person to moral, physical or psychological danger or the person’s release would defeat the ends of justice, and the Board shall record the reasons for denying the bail and circumstances that led to such a decision.”

Learned A.P.P. would urge that Section 12 of the Act cannot come to an aid of the applicant, as he is directed to be tried as an adult by the Sessions Court and, therefore, no affidavit can be derived.

3. With the able assistance of the respective counsel, I have perused the material against the present applicant as compiled in the charge-sheet. The prosecution case is, on 12/03/2020, the applicant and the main accused, one Ajay Shinde approached a group of three friends, who were chatting. It is alleged that there was a old rivalry between accused Ajay Shinde and these three friends. When the approached towards the group of these three people, the applicant was allegedly holding piece of broken glass in his hands, whereas accused Ajay Shinde was holding a beer bottle. On sensing that the two are approaching towards them, the three persons tried to flee away from the spot, but the accused persons caught hold of one of the three friends, namely, Vighnesh and stabbed the piece of glass in his body, which resulted in bleeding injury. He was taken to the hospital, where he was declared dead.

4. The main accused-Ajay Shinde surrendered himself before Borivali Police Station and he named the present applicant, who came to be formally arrested on 13/03/2020.

As the applicant was a minor, he was remanded to Children's Home in Dongri. The applicant was directed to be tried as an adult and his case was committed to the Sessions Court, Dindoshi (Children's Court), where the case is numbered as Sessions Case No.425 of 2020.

5. It can be seen that the applicant preferred a bail application and on 29/10/2020, the Principal Magistrate, Suburban Juvenile Justice Board, recorded as under :-

“By preliminary assessment order dated 29/10/2020, this case is transferred for trial to Children's Court. Considering the heinous nature of offence and the fact that Children's Court will be trying the offence it will not be proper for the Board to decide bail application, so the bail application be put up before Children's Court.”

The said order was passed, after examining the mental health report received from Sir J.J.Group of Hospitals in respect of the psychiatric evaluation of the juvenile as well as his physical examination to ascertain the physical capacity. A report from the Probation Department from Police Station Boriwali was also forwarded to the JJ Board, where it is recorded as under :-

“CCL Shubham has been staying in the Observation Home for more than 7 months. During his stay in the Home, on few occasions he had exchange of words with the staff of

home as well as other inmates on discipline issues. Most of the time he found to be decent-well behaved, he actively participated in independence day cultural program, performed well the acts, noticed full of zest in the task various tasks allocated to him, showed leaderships skills. Daily attending physical training sessions. He is at present learning carpentry work, feedback from the Carpentry teacher is positive about Shubham. CCL Shubham regularly attended counselling sessions through video calls with the counselor.

Overall behaviour of the CCL Shubham noticed to be good.”

6. The JJB on 29/10/2020, transferred the trial of the case to the Children’s Court having jurisdiction, by considering the preliminary assessment report as well as the mental health report placed before it and it recorded as under :-

“9. The Medical Superintendent, Sir J. J. Hospital has submitted medical certificate wherein it is mentioned that, on physical examination of the said C.C.L., no abnormality noted which can prevent him to commit the offence registered against him.

10. Mental Health Report dated 27/07/2020 is also on record. The said report is as follows :

He understands seriousness of allegation against him and that it is against law. No perceptual abnormality. No delusions. Insight present. Judgment intact.

Impression : No active psychopathology at present and in the

past.

Conclusion : No evidence of mental incapacity to commit the offence.

11. The sequence in which the events unfolded during the alleged incident reveal that C.C.L. and the major accused had predetermined to commit the crime, followed victim to the spot and left the scene only after causing deadly injuries to the victim. These circumstances and the Physical and Mental Health Report of C.C.L. necessitate that there is need for trial of the said child as an adult. So, the case shall have to be transferred for trial to the Children's Court."

On the application being preferred before the Sessions Court at Dindoshi, it came to be rejected on 29/01/2021, by recording as under :-

"5. As per the FIR, the applicant stabbed the deceased with a piece of bottle on his neck, resulting into his death. The offence is committed by the applicant with pre-meditation, as he approached the deceased with the piece of bottle, and thereafter, stabbed him. Considering the gravity of the crime, the applicant does not deserve to be enlarged on bail. Section 12 of the Juvenile Justice Act cannot come to an aid of the applicant, as he has to be tried as adult by this Court. Section 12 enables the Juvenile Justice Board to enlarge a juvenile on bail."

7. It can be seen that the application of the applicant has been rejected on the ground that Section 12 of the Act cannot come to his rescue, as he is directed to be tried as an adult and

Section 12 enables the Juvenile Justice Board to enlarge a juvenile on bail.

The question that arises for determination is, whether on being tried as an adult, is the juvenile denuded of the statutory right available to him under Section 12 of the Act.

8. The said question is no more res integra and has been deliberated upon by several High Court, including the Bombay High Court. Before I proceed to deal with the said decision, it would be necessary to reproduce Section 12 of the Act, which is a provision pertaining to the release of a child alleged to be in conflict with law and it reads thus :-

12. Bail to a person who is apparently a child alleged to be in conflict with law. (1) When any person, who is apparently a child and is alleged to have committed a bailable or non-bailable offence, is apprehended or detained by the police or appears or 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 or placed under the supervision of a probation officer or under the care of any fit person:

Provided that such person shall not be so released if there appears reasonable grounds for believing that the release is likely to bring that person into association with any known criminal or expose the said person to moral, physical or psychological danger or the person's release would defeat the ends of justice, and the Board shall record the reasons for denying the bail and circumstances that led to such a decision.

(2) When such person having been apprehended is not released on bail under sub-section (1) by the officer-in-charge of the police station, such officer shall cause the person to be kept only in an observation home [or a place of safety, as the case

may be,] in such manner as may be prescribed until the person can be brought before a Board.

(3) When such person is not released on bail under sub-section (1) by the Board, it shall make an order sending him to an observation home or a place of safety, as the case may be, for such period during the pendency of the inquiry regarding the person, as may be specified in the order.

(4) When a child in conflict with law is unable to fulfill the conditions of bail order within seven days of the bail order, such child shall be produced before the Board for modification of the conditions of bail.”

9. Reading of Section 12 makes it imperative to release the applicant, who is alleged to have been committed bailable or non-bailable offence and this power has to be exercised notwithstanding anything contained in the Code of Criminal Procedure, which expect a decision of release, taking into account the provisions of Section 439 of Cr.P.C. It is not in dispute that the applicant is a child at the time of commission of offence and would fall within the meaning of ‘child in conflict with law’, as defined in the Act of 2015.

In the scheme of enactment, it can be seen that Section 12 contains an imperative mandate to release a child on bail, when he is apprehended or detained in connection with an offence and it is a special provision, which stand to the exclusion of the Code of Criminal Procedure. Section 5 of the Cr.P.C. contained a saving clause, which reads thus :

“5. Saving.- Nothing contained in this Code shall, in the

absence of specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred or any special form of procedure prescribed, by any other law for the time being in force.”

The parameters for considering an application for bail filed by a juvenile under Section 12 of the Act of 2015 are clearly distinguishable from the application filed under Section 439 of Cr.P.C. and after following the procedure as prescribed under the Act i.e. from Sections 15 to 18 when a decision is taken to try a juvenile as an adult, the issue that arises for consideration is, upon such a contingency, whether the benefit of Section 12 can be denied to him.

This precise question arose for consideration before the High Court of Delhi in case of **CCL 'A'** (supra) and vide a details judgment delivered by the learned Single Judge on October 19, 2020, the issue has been specifically answered and on going through the said law report, I cannot disagree, but express concurrence with the view expressed by Justice Anup Jairam Bhambani.

10. A similar issue was answered by the Delhi High Court in **CCL 'A'** (supra), when a similar point arose for determination and it was answered by recording that bail plea on behalf of a

juvenile must always be considered on the criteria and parameters set-out in Section 12 of the J.J.Act.

11. The precise questions that were framed by the learned Judge of the Delhi High Court read as under :-

“(a) When upon a *preliminary assessment* made by the JJB under section 15(2) of the JJ Act, the JJB is of the opinion that there is need for trial of the child as an ‘adult’ and it transfers the trial to the Children’s Court, does the child in conflict with law *de-jure* become an ‘adult’, to be treated as such in all subsequent proceedings ?

(b) Whether an application for bail is maintainable before the High Court under section 439 Cr.P.C. for a child in conflict with law, who is sent-up for trial as an adult before the Children’s Court ?

On detailed analysis of the statutory scheme, the questions were answered as under :-

“26. Clearly therefore, even when a child is sent-up for trial as an adult before a Children’s Court, the child does not become an adult or ‘major’, but is only to be treated differently considering the heinous nature of the offence alleged and consequent need for a stricter treatment of the offender, though still as a juvenile in conflict with law. It must be borne in mind that the Legislature has created this categorization based upon an assessment of the child’s “mental and physical capacity to commit such offence, ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence”. If the intention of the Legislature was that upon such assessment, the child would *de-jure* become an adult, then the question of there being a

separate Children's Court to try him with specific safeguards provided for the trial would not arise. That however is not the case.

27.

28. With specific reference to the application at hand, it bears mentioning that even though a child may be sent-up for trial before the Children's Court as an adult, there is no provision in the JJ Act that requires any departure from considering the matter of release of such child on bail under section 12. This court is supported in this view by the judgment of a Co-ordinate Bench of this court in A.C. v. State of NCT of Delhi Para 11. Is a child's bail plea maintainable before the High Court under section 439 Cr.P.C."

12. It is to be noted that the Juvenile Justice Act is a beneficial piece of legislation and it must be construed by taking into consideration the object behind it's enactment, being to provide for the care, protection, treatment, development and rehabilitation of neglected or delinquent juveniles. It is a beneficial legislation aimed at making available the benefit of the Act to the neglected or delinquent juveniles.

While construing the provision contained in Section 12, which contemplate that a juvenile shall be released on bail notwithstanding anything contained in the Cr.P.C. and Section 12 further stipulates that he may be released with or without

sureties, or may even place under the supervision of the Probation Officer or under the care of any fit person. The only embargo in not releasing such a person on bail is the proviso, which prescribes that if there appears reasonable grounds for believing that the release is likely to bring that person into association with any known criminal or expose the said person to moral, physical or psychological danger or the person's release would defeat the ends of justice.

None of the Court i.e. JJB or the Children's Court had adverted to the said aspect of the matter. The Probation Officer, in his report has clearly recorded as under :-

"This is First time the CCL was involved in a criminal act. CCL Shubham clearly accepted his presence at site of offence, his active role in the offence. CCL also articulated vigorously that it was unintentional to cause any grievous hurt to the victim & the offence committed under influence of narcotic substances. Trace of repentance is noticed & Shubham expressed the same.

CCL is regularly attending counselling sessions, he need to undergo more counseling sessions on regular basis to curb his anger consequences of addiction & realize the consequences of his act.

Father of the CCL is ready to take custody of the CCL, ensuring his wellbeing. Concrete Betterment plan from parent need to taken for progress & good behavior of the CCL.

Supervision on CCL is necessary, CCL Shubham can be directed to report Probation Officer once a month to monitor his behavior and progress & suitable NGO can be directed to monitor CCL.

Considering the interest of CCL further order can be passed.”

13. The report of the Probation Officer has also specifically recorded that the CCL has committed the offence under the influence of the drug and in the fit of anger and he had no intention to kill the victim, but his intention is only to beat him.

14. The applicant was taking education in standard 10th in English medium. He was working in and around Pune, after being dropped out of the school and earning some money for himself. The Probation Officer report also reveal that at present, he is learning carpentry work and feedback from the teacher is positive. He is also attending counselling sessions through video calls. The remark of the Probation Officer is, “overall behavior of CCL Shubham noticed to be good”.

15. In the aforesaid circumstances, when the Children’s Court has rejected his application, without advertng to the said facts and also the statutory mandate of Section 12, is an unfortunate part. Merely because, he is directed to be tried as an adult, he cannot be denied the benefit of Section 12. I am fortified by the earlier view taken by this Court in the case of *Sandeep Ayodhya Prasad Rajak (Bail Application No.3838 of 2021 decided on 22/08/2022)* and also in the case of *Prasad*

Subhash Khade Vs. State of Maharashtra (Bail Application No.1647 of 2020 decided on 18/03/2021)

16. In any case, the J.J.Act focuses on a principle of presumption of innocence and on the principle of best interest as well as principle of repatriation and restoration, by virtue of which, the applicant, who is a juvenile, has a right to be reunited with his family at the earliest and to be restored to the same socio-economic and cultural status that he was in, before coming under the purview of this Act, unless such restoration and repatriation is not in his best interest. The co-accused is already undergoing incarceration and the father of the CCL is ready to take his custody, ensuring his well being. In the wake of the above circumstances, emerging from the facts and circumstances of the case, I deem it appropriate to release him on bail. Hence, the following order.

: ORDER :

- (a) Application is allowed.
- (b) Applicant -Shubham @ Bablu Milind Suryavanshi shall be released on bail in connection with C.R.No.141 of 2020 registered with Boriwali Police Station on furnishing P.R. Bond to the extent of Rs.25,000/- with one or two sureties in the like amount.

The applicant shall be released on cash bail of Rs.25,000/- for a period of six weeks. During the said period, he shall arrange for the sureties.

(c) The applicant shall attend the trial on regular basis.

(d) The applicant shall report to the Probation Officer once in every two months and his performance and conduct shall be monitored by the Probation Officer.

(e) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any Police Officer. The applicant shall not tamper with evidence.

(f) On being released on bail, the applicant shall furnish his contact number and residential address to the Investigating Officer and shall keep him updated, in case there is any change.

(SMT. BHARATI DANGRE, J.)