

## BAIL OF JUVENILE UNDER JJ. ACT 2000

It has been mentioned in the Act that “Bail and not the jail is a rule”, and the Board and court should be liberal in granting the bail to the juvenile produced before them. The judicial trend can be examined in the cases given below. In *Brijesh Kumar v. State of U.P.*<sup>1</sup> the court held that the entries in the school leaving certificate were rejected on the ground that parents understated the age of the children at the time of admission to school. The Juvenile Court on the basis of the material on record appreciated the evidence and declined to accept the evidence of the father of the petitioner claiming to be juvenile. The high court also accepted the reasoning given by the juvenile court regarding entries in the school leaving certificate. However, even though petitioner was held not to be a juvenile, the court can released him on bail, after observing that he was a young boy and can be easily influenced and if he remains in the company of hard-core criminals in Jail, his entire life may be spoiled. The petitioner was ordered to be released on bail on his furnishing personal bond in the sum of Rs.10,000/- with one surety in the like amount to the satisfaction of the trial Court. The matters which have been enlisted in Section 15 of the Act are not to be construed as exclusive but the Board has to act in the spirit of the law and ensure that the purpose for which it is enacted is carried out. For that purpose the Board at the time of considering the bail application of a juvenile ought to explore the possibility of resorting to the options which have been entailed in Section 15 of the Act which includes group counselling and counselling through the agencies of professional counsellors to such delinquent juveniles so that the process of reforming them is put on track. The Principal Magistrate is to act by imbibing the spirit of the statute and not merely act by sticking to the letter of the statute while stripping it of its soul. It is clear that the bail application of a juvenile can be entertained by the Board only when he is arrested or detained or appears or is brought before the Board otherwise application cannot be entertained. If the juvenile is arrested or detained or appears or is brought before the Board then certainly bail application will be filed under Section 12 and the same be decided by the Board only but not by the High Court or Court of Session.<sup>2</sup>

In *Md. Gazi Khan's case*,<sup>3</sup> bail application was moved by the petitioner on behalf of his son, *Md. Gazi Khan*, who was arrested under section 20(b) and 60(3) NDPS Act for having with him 106 Kgs of Ganja contained in 6 gunny bags. The accused, *Gazi Khan* was a juvenile aged about 14 years old and he was pursuing his studies in a local school. It was submitted that the accused was arrested under section 20(b) of NDPS Act and the offence so committed under that section does not come under the purview of Section 37(b) of the said Act, and as such the accused is entitled to be released on bail. On the other hand state contended that under the NDSP Act there is no provision for asking relief as juvenile. The court ordered that “the accused *Md. Gazi Khan* shall be released on of Rs.10,000/- with one surety of the like amount to the satisfaction of the learned Special Judge (NDPS) Manipur. It was further directed that accused, after his release on bail, shall be put under the custody of his father, the petitioner who shall produce the accused *Md. Gazi Khan* before the concerned Investigation Officer as and when required.”

In *Abhey Kumar Singh v. State of Jharkhand and Ors*<sup>4</sup> in this writ application, the petitioner prayed for quashing the entire criminal prosecution pending in the Court of Addl. Chief Judicial Magistrate, Deoghar and also for a direction of release of the petitioner forthwith from the Jail custody on the ground that the

---

1 . 98(2002) DLT 63

2 . *Satendra Sharma v. State of Madhya Pradesh* Mc.Rc.No.4183 of 2014,

3 . 2001-(107)-Cr.LJ-1140.

4 . 2004 CriLJ 4533

petitioner is a juvenile and he is in custody since 6.11.2000 along with other criminals and the total period of detention i.e. 30 days in remand home including three years eight months which is still continuing, in total three years nine months. The petitioner submitted that in spite of direction of the Court he was detained in custody under the Juvenile Justice Act. The enquiry also could not be concluded but the substance of accusation was explained on 16.9.2003. The petitioner submitted that he had remained in custody for more than three years, hence he cannot be sentenced. The entire criminal proceeding has become infructuous. Considering the above fact and circumstances of the case, the petitioner was released forthwith from custody without any bond or surety on the reasoning that the inquiry proceeding under Juvenile Justice Act has to be concluded within a period of three months from the date of receipt of a copy of this order, failing which the Criminal Proceeding shall stand automatically quashed. It is well settled that the Juvenile cannot be sentenced and the total period of sentence is three years. In the present case the petitioner has already served the detention period for more than three years eight months and is still in custody without any special provisions in the custody under the Act.

In two decisions of the Supreme Court, namely, *Rajinder Chandra v. State of Chhattisgarh and Anr*<sup>5</sup> and *Pratap Singh v. State of Jharkhand and Anr*<sup>6</sup> the Court declared JJ (C&PC) Act, 2000 to be a beneficial legislation for the benefit of the juvenile and the Act must be construed as such. In this line, when Section 12 makes it mandatory for a juvenile, even if he is „apparently a juvenile“ to be released on bail, then this Court and all the courts dealing with such a situation must give full meaning to the provisions of the said Section as also the object of the Act. Bail has to be granted to a juvenile, notwithstanding anything contained in the Code of Criminal Procedure, 1973 or any other law for the time being in force which includes the NDPS Act also except for the conditions mentioned in Section 12 itself which, if one examines the same, are also to prevent any damage to the juvenile. The idea behind Section 12 being that the juvenile must be released on bail unless releasing him on bail would be detrimental to him or would entirely defeat the ends of justice.

In *Rakesh Kumar @ Sittu v. State of Jharkhand*<sup>7</sup> revision application was filed against the order of the 4th Additional District and Session Judge, Palamau at Daltonganj in Criminal Appeal, affirming the order passed by Additional Chief Judicial Magistrate, Palamau at Daltonganj, whereby and where under they refused to enlarge the petitioner on bail, who was accused in connection with a case registered under Section 307 of the Indian Penal code on the plea that if the petitioner is released on bail he may form his own association of criminal or will become associate of other criminal gangs”. The revision petitioner submitted that the person assigned by the appellate court could not be a valid ground for refusing the prayer for bail. Revision Petition Allowed.

In *Devesh v. The State (NCT of Delhi)*<sup>8</sup> a criminal revision before Delhi High Court decided on 12.5.2006, it was held that “it is apparent from a reading of Section 12 that there must be a reasonable ground for believing that the juvenile's release would bring him into association with 'known' criminals. The Additional Sessions Judge has merely conjectured that the release of the petitioner might bring him in contact with criminals not 'known criminals', on the basis of an assumption that some of his companions have not been arrested and those companions are criminals. This is not the right approach to take while

---

5 . 2002 SCC (Cri) 333

6 . (2005) 3 SCC 551

7 . 2006 (2) JCR130(Jhr)

8 . CrL R. P.214/2006,

construing Section 12 of the JJ (C & PC) Act, 2000. When the expression used is 'any known criminal' then the Court should give full meaning to that expression. Even as per the case of the prosecution, neither did the juvenile commit the murder nor did he catch hold of the deceased nor he was responsible for the injuries. The only injuries recorded in the postmortem are knife injuries. Even otherwise the petitioner would be entitled to bail although more so as he is a juvenile. Accordingly, the order rejecting bail was set aside and the petitioner was directed to be released on the petitioner's father furnishing an affidavit to the fact that he shall take proper care of his son and that he shall not permit his son to fall into any kind of bad company. This in addition to the condition that petitioner shall be released on bail on his furnishing a personal bond in the sum of Rs.10,000/- with one surety of the like amount to the satisfaction of the Juvenile Justice Board.

In *Ranjit Singh v. State of H.P.*<sup>9</sup> the petitioner was arrested on 11th September, 2004 for an offence punishable under Section 376 read with Section 511 of the Indian Penal Code and Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The petitioner applied for bail before the Juvenile Justice Board at Shimla. However, the Principal Magistrate declined the bail on the grounds that release of the accused juvenile on bail would defeat the ends of justice and also put him in physical and psychological danger and that there would be a lot of resentment amongst the people in the area which will have adverse psychological impact. Therefore this appeal was filed. The appeal was allowed. The Court below was directed "to release the petitioner forthwith on furnishing bonds in the amount of Rs.5,000/- with one surety of the like amount to the satisfaction of the Principal Magistrate, Juvenile Justice Board, Shimla, subject to the condition that neither the petitioner nor his parents would influence the witness or otherwise interest with them". Section 12 of the Act stipulates that "a juvenile is entitled to release on bail provided the release does not expose him to moral, physical or psychological danger or his release may not defeat the ends of justice. In reply, filed by the prosecution, or in the police file, there is nothing to show that juvenile, if released on bail, would be exposed to criminal or neither moral or physical or psychological danger nor it can be said that his release will defeat the ends of justice. The Principal Magistrate, Juvenile Justice Board, therefore erred in staying that release of juvenile would put him to moral, physical and psychological danger without there being any material on record".

In *Manmohan Singh v. State of Punjab*<sup>10</sup> this petition was filed by juvenile Manmohan Singh, who was confined in Observation Home, for setting aside the order passed by the Chief Judicial Magistrate/ Juvenile court, Ludhiana. The Courts below declined the bail to the petitioner on the ground that firstly, there is apprehension that the release of the petitioner on bail would expose him to moral and physical danger as no elderly person is available to look after him. Secondly, the petitioner at the time of occurrence was armed with Kirpan and had caused injuries to the deceased as a result of which he died. In these circumstances, the release of the petitioner on bail would likely to harm the trial as may pass coercion upon the prosecution witnesses. The petitioner submitted that both the aforesaid reasons recorded by the Additional Sessions Judge are unsustainable and on the basis of the same, the prayer of the petitioner for release him on bail cannot be rejected as it is mandatory for the Juvenile Court to release the juvenile on bail notwithstanding anything contained in the Code of Criminal Procedure, 1973 or in any other law for the time being in force. Petitioner further submitted that apprehension of the Courts below to the effect that if the petitioner is released on bail, he would expose himself to moral and physical

---

9 . 2005 Cri L J 972 .

10 . (2004) 136 PLR 497

danger having no elderly person to look after him, is wholly without any basis as the grandfather and maternal uncle of the petitioner are always available at home to look after him. The respondent State opposed the prayer made by the petitioner by submitting that the petitioner was rightly declined the bail keeping in view the nature of crime he has committed and the fact that in case of his release, there is apprehension of his being exposed to moral and physical danger having no elderly person to look after him. The Criminal Revision was allowed and the impugned orders passed by the Chief Judicial Magistrate/ Juvenile Court, Ludhiana and Additional Sessions Judge, Ludhiana respectively, were set aside and the petitioner was ordered to be released on bail subject to the satisfaction of CJM Ludhiana. The Court held that the orders passed by the Courts below are not sustainable in the eyes of law. It was observed that from the bare reading of the Section 12, it is clear that it is mandatory for the Juvenile Court to release a juvenile on bail with or without surety if such a juvenile is arrested or detained or appears or is brought before a Juvenile Board in a bailable or non-bailable offence, notwithstanding anything contained in the Code of Criminal Procedure. The only exception is that if there are reasonable grounds for believing that the release of the 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, then he shall not be released on bail. The reasonable grounds for believing, that his release is likely to bring 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, should be based upon some material/evidence available on the record. It is not a matter of subjective satisfaction but while declining bail to the juvenile on the said ground, there must be objective assessment of the reasonable grounds that the release of the juvenile is likely to bring him in association with any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice. In my opinion, under the aforesaid Section, the benefit of bail cannot be denied to the juvenile on the ground that he has committed murder by a sharp edged weapon by inflicting injuries on the person of the deceased. There is only one exception as, indicated above, but under the said exception also the release of the juvenile on bail can be denied if there is sufficient material on record which clearly indicate that the release of the juvenile is likely to bring him into association with bad company or that his release would defeat the ends of justice. In the instant case, admittedly the petitioner is a juvenile. It is also undisputed that the grandfather of the petitioner is available at home. In case the petitioner is released on bail, he can be looked after by his grandfather and the observation of the Courts below that the release of the petitioner would lead to moral and physical danger having no elderly person to look after him, is a mere apprehension based on no material/evidence. Merely because the petitioner is alleged to have caused injuries to the deceased by sharp edged weapon, he cannot be denied the benefit of bail under Section 12 of the Act, as the provisions of this Section provide that every juvenile for whatever offence he is charged with shall be released on except under the aforesaid one circumstance, which in my opinion, is not existing in the instant case. Rather by declining the bail to the petitioner the very purpose of the Act will be defeated. Thus, the impugned orders passed by both the Courts below are not sustainable in the eyes of law as they will defeat the very purpose of the Act.

In *Vijendra Kumar Mali Etc. v. State of U.P.*<sup>11</sup> accused persons were declared as juveniles by the court of C.J.M. and later on same fact was confirmed by the Sessions Judge, Sonbhadra. However, both the court of C.J.M. and the Sessions Judge, Sonbhadra rejected the bail Applications of the accused persons. Against this refusal, revision was filed before the Allahabad High Court. High Court allowed the revision

---

11 . 2003-(109)-CRLJ-4619-ALL 205

setting aside the order of the Sessions Judge and that of the C.J.M., so far as it related to refusal of bail. It was also directed that if the Revisionists move application for bail, the court shall dispose it of keeping in view the provisions contained in section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2000. This order was placed before the Sessions Judge, Sonebhadra but he again refused bail to the Revisionists by his order dated 10.2.2003. Being aggrieved by the said order, the present Revisions were filed. Revision was allowed. Orders of Sessions Judge refusing bail were set aside and it was directed that the Revisionists should be admitted to bail on their guardians filing a personal bond and two sureties in the like amount to the satisfaction of the C.J.M. Sonebhadra. The court observed that the Sessions Judge, "Sonebhadra has probably lost sight of the provisions of the Act and ignored the directions issued by this Court passed in the aforesaid Revisions. He has mentioned the ground of refusal of bail to be gravity of the offence, which is none of the grounds mentioned in section 12 of the Act. It appears from this order that the Sessions Judge, Sonebhadra was bent upon to refuse the bail without caring for the law on this point. Section 12 of the Act provides that the juvenile offender shall be released on bail but the exception would be that he shall not be released if there appears 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". This Court in a number of judgments has categorically held that bail to the juvenile can only be refused if anyone of the grounds existed. So far as ground of gravity is concerned, it is not covered under the above provisions of the Act. If the Bail application of the juvenile was to be considered under the provisions of the Code of Criminal Procedure, there would have been absolutely no necessity for the enactment of the aforesaid Act. The language of Section 12 of the Act itself lays down that notwithstanding anything contained in the Code of Criminal Procedure, 1973 or in any other law for the time being in force, the juvenile accused shall be released. The order passed by the Sessions Judge nowhere shows that anyone of the grounds for refusing Bail existed. Under these circumstances the refusal of the Bail was not only unjustified but illegal and against the purpose of the Act.

In *Vicky alias Vikram Singh v. State of U.P. and Ors*<sup>12</sup>. juvenile Vicky alias Vikram Singh was declared to be juvenile but refused the Bail on the ground that the offence is of heinous nature and is exclusively triable by the Court of Session. An appeal against the said order was preferred but the Sessions Judge Kanpur, who dismissed the appeal. The Revision was filed against the judgment and order of Sessions Judge, Kanpur Nagar, in Allahabad High Court. The Court held that "Bail was dismissed without applying mind or caring for the law. Section 12 of the Juvenile Justice (Care and Protection of Children) Act 2000, is very clear on this point. According to Sub-section (1) of Section 12 any person, being juvenile, shall be released on bail with or without surety. However, for refusal of the bail there are only three grounds firstly if the release is likely to bring him into the association with any known criminal. Secondly, exposes him to moral, physical or psychological danger. And thirdly if his release would defeat the ends of justice. This Court has been repeatedly directing that if the release is refused on these grounds the Court should record findings as to whether any such ground exists or not. It is not that the mere quoting of few lines from this Act, the bail should be refused. The impugned order does not show any such ground either in the order of the Chief Metropolitan Magistrate or in the order of the Magistrate. The Magistrate in his order has refused the bail firstly on the ground that it is exclusively triable by the Court of Session and the offence being of heinous nature, which is no ground for refusing bail under/ Section 12 of the Act. Appellate Court also summarily dismissed the appeal without properly appreciating the law on

---

12 . 2003 Cri LJ 3457 .

this point and even without discussing the law. The Revision was therefore allowed with direction that the Revisionist Vicky alias Vikram Singh shall be released on bail on his guardian's furnishing a personal bond and two sureties each in the like amount to the satisfaction of Chief Metropolitan Magistrate Kanpur Nagar”.