Criminal Revision Application No. 245 of 2016

Jiva Kumar Harijan v. State of Maharashtra

2016 SCC OnLine Bom 6928

In the High Court of Bombay

(BEFORE REVATI MOHITE DERE, J.)

Jiva Kumar Harijan ..... Applicant

v.

The State of Maharashtra & anr. ..... Respondents

Mr. Rishi Bhuta, Advocate, for the Applicant

Mrs. A.S. Pai, APP, for the Respondent No. 1 - State

Criminal Revision Application No. 245 of 2016

Decided on June 21, 2016

P.C.

REVATI MOHITE DERE, J.:— Heard learned counsel for the Applicant and the learned APP for the Respondent No. 1 - State.

2. By this Application, the Applicant, who is a child in conflict with law, through his mother has sought quashing of the order dated 29.01.2016 and 17.03.2016 passed by the Juvenile Justice Board and the order dated 22.02.2016 passed by the learned Additional Sessions Judge, Borivali (Div.), Dindoshi, Goregaon and has sought his enlargement on bail and has prayed that his custody be handed over to his mother on such terms & conditions that may deem fit and proper.

3. The Applicant, who is a child in conflict with law was arrested in connection with C.R. No. 615 of 2015 registered with the Malad Police Station, Mumbai for the alleged offences punishable under Sections 323, 376, 504, 506 r/w.34 of the Indian Penal Code r/w. Sections 4, 6, 8 & 12 of the Protection of Children from Sexual Offences Act (POCSO). The Applicant was arrested on 24.12.2015 and produced before the Juvenile Justice Board, Dongri. On 29.01.2016, the Bail Application preferred by the Applicant was rejected by the Juvenile Justice Board. Against the said order, the Applicant preferred an Appeal, being Cri. Appeal No. 37 of 2016 through his uncle. The learned Sessions Judge was pleased to reject the said Appeal vide order dated 22.02.2016. The Applicant, thereafter, again after filing of the charge-sheet filed an Application seeking his enlargement on bail. However, the said Application was rejected by the learned Principal Magistrate, City Juvenile Justice Board, Dongri vide order dated 17.03.2016. The Appeal filed against the said order through the mother of the Applicant was also rejected by the Sessions Court vide order dated 13.04.2016. The present Application challenges the aforesaid orders rejecting the Applicant's Application for bail. The said Application has been filed by the Applicant through his mother - Meena Kumar Harijan.

4. Learned counsel for the Applicant submitted that the learned Judges have not considered the object and reasons for which the Juvenile Justice (Care and Protection of Children) Act, 2015 has been enacted. He submitted that in the present case, Section 12 of the said Act has also not been complied with. According to the learned counsel, no document/report was placed before the learned Judges to show that the Applicant, if released would come 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. He submits that the Applicant has no antecedents. He relied on an

order passed by this Court in the case of *Prashant S/o Rammurat Tiwari* v. *The State of Maharashtra*, reported in 2015 ALL MR (Cri) 1285 and an order passed by the Madhya Pradesh High Court in the case of *Rabi Khan @ Salman* v. *State of Madhya Pradesh*, reported in 2016 ALL MR (Cri) JOURNAL 14 (M.P. HIGH COURT).

5. Learned APP submitted that the offences with which the Applicant, a child in conflict with law is charged are serious in nature and that the FIR discloses that the Applicant had sexually assaulted a minor girl.

6. Perused the papers. Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015 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 without or without surety or placed under the supervision of a probation officer or under the care of any fit person:
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> 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) …….
>
> (3) …….
>
> (4) ……."

7. It is evident from a perusal of Section 12(1) of the said Act, that when any person, who is a child 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 then 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. Under the proviso to Clause 12(1) of the said Act, such a person shall not be released, if there appears reasonable grounds for believing that the release is likely to bring the 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. Under the said Clause, it is mandatory for the Board to record the reasons for denying bail and the circumstances that led to such a decision.

8. From a perusal of the orders dated 17.03.2016 and 13.04.2016, it appears that the Application for bail has been rejected on the ground that the victim girl resides in the same area and that there was displeasure in the area against the Applicant. It is stated that if the Applicant is released, there would be huge reaction from the people residing in the vicinity and that the Applicant would be exposed to danger. It is also stated that the victim girl is aged 7 years and the Applicant can threaten her. The orders do not show, if any, report was called for by the Juvenile Justice Board/Court. Learned APP is unable to make a statement despite the matter having being adjourned on the last date. Even today no report or Affidavit is filed by the State, expressing their apprehension with regard to the release of the Applicant. No antecedents of the Applicant are brought on record. Infact, the Applicant's mother has tendered an Affidavit today, which is taken on record and marked as "X" for identification. In the said Affidavit, she has stated that she will reside at some other place and not in the vicinity or area where the alleged incident has taken place. She has undertaken the

responsibility of her son i.e. the Applicant and has undertaken to ensure that the Applicant, a child in conflict with law, will not enter the jurisdiction of the Malad Police Station, Mumbai till the conclusion of the trial and that the Applicant will report to the M.I.D.C. Police Station, having jurisdiction over the address where she intends to reside. The mother of the Applicant has given the address in the said Affidavit where she would be residing during the trial. She has also undertaken to ensure that the Applicant will remain present before the Juvenile Justice Board, Dongri for all the hearings.

9. Considering the aforesaid Affidavit and the undertaking tendered by the mother of the Applicant, the apprehension expressed by the learned Judges that the Applicant would threaten the victim and that there would be displeasure in the area, if he is enlarged on bail would not survive. It is pertinent to note, that the prosecution has neither filed an Affidavit nor expressed any apprehension with regard to tampering. The Applicant has parents. It is not the case of the prosecution that the Applicant is a vagabond. According to learned counsel, the Applicant was studying in 10th Std. at the relevant time when the alleged incident is stated to have taken place.

10. Considering the object of the Act, the peculiar facts and circumstances of this case and the Affidavit filed by the mother of the Applicant, I am of the opinion that the Applicant, a child in conflict with law would be better looked after, if he is in the custody of his parents, as they will be able to monitor his movements and activities. Considering the aforesaid, the impugned orders are quashed & set aside and the Applicant, a child in conflict is enlarged on bail under Section 12(1) of the Juvenile Justice (Care and Protection of Children) Act, 2015.

11. The Revision Application is allowed on the following terms & conditions:-

ORDER

(i) The Applicant, a child in conflict with law shall be released on bail on his mother - Meena Kumar Harijan executing a P.R. Bond in the sum of Rs. 10,000/- for ensuring production of the Applicant before the Juvenile Justice Board, as and when required, subject to the condition, (i) that the mother of the Applicant shall produce the Applicant before the Juvenile Justice Board on every Wednesday at 11.00 a.m. and report to the Board about his behaviour and progress, initially for a period of three months and thereafter, on the 1st Wednesday of every month for a period of six months and thereafter, as and when the Board may so direct; and (ii) shall furnish the address to the Board, where she alongwith the Applicant will be residing. In case, the Board feels the need to provide proper care and protection to the Applicant, a child in conflict with law, the Board is at liberty to do so;

(ii) The Applicant, a child in conflict with law shall not enter the jurisdiction of the Malad Police Station, Mumbai during the pendency of the case against him;

(iii) The Applicant shall not pressurize or contact any witness concerned with the said case.

12. Accordingly, the Application is disposed of.

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