

IN THE HIGH COURT OF KARNATAKA  
KALABURAGI BENCH

DATED THIS THE 12<sup>TH</sup> DAY OF SEPTEMBER, 2019

BEFORE

THE HON'BLE MRS. JUSTICE K.S.MUDAGAL

CRIMINAL REVISION PETITION No.200054/2019

Sri. Arun v/s. The State of Karnataka

ORDER

“Whether the impugned order of the Juvenile Justice Board dated 13.05.2019 in Crime No.23/2019 of Kolhar Police Station, rejecting the bail application of the petitioner and the order of the Sessions Court confirming the same in Criminal Appeal No.37/2019 suffer any infirmity and illegality?” is the question involved in this case.

2. The petitioner was accused No.5 in Crime No.23/2019 of Kolhar Police Station. The said case was registered against the petitioner and four others for the offences punishable under Sections 363, 376(d), 506 IPC and Section 5(G) r/w Sections 6 and 15 of the Protection of Children from Sexual

Offences Act, 2012 (for short 'POCSO Act') and Section 66(e) of the Information Technology Act on the complaint of 'X' (for the purpose of confidentiality, victim is referred to as 'X' henceforth) aged 15 years. By this time, the charge sheet is filed in the case.

3. Case of the prosecution in brief is as follows:

Accused No.1 aged 22 years was a driver by profession. The parents of the victim were hawkers selling utensils. Accused No.1 was known to the family of 'X' as well as accused Nos.2 to 5. Accused Nos.2 to 5 were all juveniles aged 17 years. On 16.04.2019 the accused conspired to commit gang rape on the victim. In execution of such conspiracy, accused No.1 tricked the victim to board his goods vehicle bearing No.KA/28-6643 stating that her parents have asked him to bring her to load utensils to the vehicle. On the way, the other accused boarded the vehicle. Then all of them took her to a near pump house at Halekolhar village, in an abandoned dry well

they committed gang rape on her under the life threat. The fourth accused videographed the scene of the petitioner committing rape on the victim. Then, all the accused left the place threatening her of her life, if she reveals the incident to anybody.

4. Petitioner was arrested. He filed bail application before the Juvenile Justice Board, Vijayapur. The Board by impugned order rejected his bail application and directed to place him in observation home, on the following grounds.

- i) Investigation report of the probation officer does not indicate the prevailing condition in the family of the child in conflict with law and that he is studying.
- ii) Having regard to the nature of the crime, if bail is granted, it leads demoralization of the society and defeat the ends of justice.

5. The Sessions Judge concurring with findings of the Juvenile Justice Board, held that

having regard to the stigma attached to the petitioner if bail is granted, he may face danger in the society and in the interest of justice he shall be lodged in the observation home. It was further held that granting bail may expose the petitioner to the association of any known criminals and expose him to moral, physical and physiological danger.

6. Learned counsel for the petitioner relying on Sections 3 and 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015 submits that gravity of the offence is inconsequential in considering the bail of juvenile, therefore, impugned order of the Courts below are liable to be set-aside.

7. In support of his contentions, learned counsel for the petitioner relies upon the following judgments.

- i) Karan vs. State Through Ratkal Police Station, Kalaburagi, District, 2017 (3) KLJ 330,
- ii) Mohit and others vs. State of Karnataka in Crl. R. P. No. 200065 / 2017; D.D. 06.07.2017

(unreported),

- iii) Ajit vs. The Sub Inspector of Police Vinobhanagara Police Station Shivamogga and another in Crl.P.No.4505/2018 D.D. 30.07.2018, and
- iv) Mukesh vs. State of Uttar Pradesh and another, Allahabad High Court in Crl.R.P.No.1340/2015.

8. Per contra learned High Court Government Pleader submits that rejection of application by Courts below was not on the sole ground of gravity of the offence and the other factors envisaged under Section 12 of the Act were considered. He further submits that having regard to the nature of the offence, the Courts below were right in holding that release of the petitioner on bail would defeat the ends of justice.

9. In support of his contentions he relied upon the following judgments.

- i) Raju @ Ashish vs. State of Uttar Pradesh, Allahabad High Court in

Crl.R.P.No.2492/2017 (unreported)

D.D.03.07.2018, and

- ii) Om Prakash vs. State of Rajasthan and another in Crl.A.No.651/2012 D.D. 13.04.2012 (S.C.).

10. Section 12(1) & (3) of the Act, which are relevant for the purpose of this case read as follows:-

“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) xxxxxx

(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.*

11. The perusal of above provisions of course makes it clear that the child shall be granted bail notwithstanding anything contained in the Code of Criminal Procedure. That means factors that weigh

with the Court while considering the bail applications under Section 439 or 437 Cr.P.C. Under those provisions one of the consideration will be the gravity of the offence.

12. However, proviso to Section 12 of the Act provides rejection of the bail under following circumstances:-

“i) If there are reasonable grounds for believing that his release is likely to bring him in association with any known criminal,

ii) Expose him to moral, physical or psychological danger,

iii) His release would defeat the ends of justice”.

13. In the case on hand, as per charge sheet records the petitioner who is child had already fallen into the company of rotten person accused No.1 and his such choice lead to barbaric act. That satisfies the first criteria that child was already in the association of known criminal. That further



shows that petitioner has the tendency or he is prone to fall into the company of persons who may expose him to moral, physical and psychological danger.

14. What is meaning of the phrase “defeat the ends of justice” is to be considered in the case. Justice is nothing but fairness, fairness not only to the accused, fairness to the accuser and society also. If petitioner is aged 17 years, as per charge sheet records ‘x’ was hardly 15 years old. As per charge sheet records, she was not only gang-raped, but the said act was videographed. These kind of cases are not only offence against a particular individual, but they are offences against the society also.

15. In *Raju @ Ashish’s* case referred to supra, the Allahabad High Court while interpreting phrase “defeat the ends of justice” held as:-

“In other words, this Court found in the expression “defeat the ends of justice” *a repose for the society to defend itself from the onslaught of a minor in*

*conflict with law* by certainly making relevant though not decisive, the inherent character of the offence committed by the minor”.

(Emphasized Supplied)

16. The Hon’ble Supreme Court in *Om Prakash’s* case referred to supra, about the phrase “defeat the ends of justice”, held as follows:-

“Similarly, *if the conduct of an accused or the method and manner of commission of the offence indicates an evil and a well planned design of the accused committing the offence which indicates more towards the matured skill of an accused than that of an innocent child*, then in the absence of reliable documentary evidence in support of the age of the accused, medical evidence indicating that the accused was a major cannot be allowed to be ignored taking shelter of the principle of benevolent legislation like the Juvenile Justice Act, subverting the course of justice as *statutory protection of the Juvenile Justice Act is meant for minors who are innocent law*

*breakers and not accused of matured mind who uses the plea of minority as a ploy or shield to protect himself from the sentence of the offence committed by him”.*

(Emphasized Supplied)

17. Having regard to the aforesaid principles laid down by the Hon’ble Supreme Court, the judgments relied upon by learned counsel for the petitioner cannot be followed. His interpretation of Sections 3 and 12 of the Act that they are only for the benefit of child in conflict with law ignoring society, cannot be accepted.

18. This Court does not find any illegality or infirmity in the orders of the Courts below. The petition is dismissed.