

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Judgment: 30th July, 2007

+ **CRIMINAL REVISION NO. 408/2007**

SANDEEP (IN J.C.)

..... Petitioner

Through Mr. K.K. Manan, Mr. Gaurav Goswami and
Mr. Rishikesh Chaudhary, Advocates

versus

THE STATE NCT OF DELHI

..... Respondent

Through Mr. Pawan Sharma, APP for the State.

Mr. Justice S. Ravindra Bhat

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| 1. Whether reporters of local papers may be allowed to see the judgment.? | Yes |
| 2. To be referred to the Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

Mr. Justice S. Ravindra Bhat : (Open Court)

1. This revision is directed against an order of the Additional Sessions Judge dated 13-6-2007, which had rejected the appeal preferred by the revisionist against the order of the Juvenile Justice Board, declining bail to him.

2. According to the prosecution, the petitioner was involved in an incident, where his maternal uncle, Bijender was murdered. The prosecution alleged that the deceased resented a relationship alleged to have been existing between his wife, and the present

petitioner, his nephew (sister's son), who lived with him. It was alleged that the petitioner entered into a conspiracy with one Puran along with the deceased's wife; pursuant to their designs, Bijender was killed.

3. The grounds which impressed the courts below to decline bail, were that the petitioner lacked parental supervision, since he had lost his father at a young age; his grandparents could not control him. It apprehended that he would be able to influence the material witnesses.

4. Learned counsel urged that the petitioner was not even named in the first information report; he was implicated much later. The final report has already been filed; the petitioner has suffered incarceration for nearly two years, since 26-8-2005. The courts were not justified in declining bail, as none of the grounds mentioned in the orders fell within the exceptions under Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as 'the Act').

5. The petition was opposed by the learned APP, who submitted that even though Section 12 mandates that bail is to be ordinarily given, there are three well recognized exceptions and the present case falls within those. It was submitted that the role of the petitioner was clear, and his involvement, undeniable. Therefore, it would be in the interests of justice not to enlarge him on bail.

6. Section 12 of the Act reads as follows:

*"12. **Bail of juvenile** - (1) When any person accused of a bailable or non-bailable*

offence, and apparently a juvenile, is arrested or detained or appears or is 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 but he 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.

(2) When such person having been arrested is not released on bail under sub-section (1) by the officer in charge of the police station, such officer shall cause him to be kept only in an observation home in the prescribed manner until he can be brought before a Board.

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

7. The court, in *Mohd. Feroz @ Bhola-vs-State* 2005 -v- State (3) JCC 1313 held that Section 12 mandates one to be released where the person is apparently a juvenile, unless, there are reasonable grounds for believing that such 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. The question of bail, it was held, was not a question of mercy so far as the said provision was concerned. It was mandatory requirement; it stipulates that such a person, who is apparently a juvenile, "*shall be released on bail*". *Shashi Kumar Saini v. The State* : 2005 VI AD Delhi 200, is a case where the court granted bail to the juvenile after considering the Social Investigation Report. In *Master Niku Chaubey v. State* : 2006 (2) JCC 720; this court ruled that the nature of the offence is not a consideration for grant of bail, to the juvenile. The only

considerations are those spelt out by Section 12, which requires bail to be granted unless the court feels that the release of the juvenile is likely to bring him into association of any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice. It has been also held that seriousness of the allegations or gravity of the charges are not relevant in the case of a juvenile accused's request for bail.

8. I have carefully examined the original records. No doubt, charges have been framed in this case. The Social Investigation Report has analysed that the petitioner lacked parental supervision, and his grandparents could not exercise control over him. Now these may be causes for objectionable behaviour, or indeed delinquency. But the manner in which this report has been construed by the courts below is disquieting. The courts have not applied their minds as to whether release of the petitioner would expose him to physical or psychological danger, or bring him into association with a known criminal. *Sans* those considerations, the fall back upon the ubiquitous “interests of justice” clause was a mechanical exercise. While examining a bail application, gravity of the offence is not a predominant criteria.

9. I am satisfied, on the basis of materials available on record, that the petitioner is entitled to grant of bail, under Section 12. Accordingly, the orders of the court below are hereby set aside. The petitioner is hereby enlarged on bail, subject to his near relative

furnishing a personal bond in the sum of Rs. 30,000/- and one surety of the same amount to the satisfaction of the Juvenile Justice Board. The petitioner shall maintain good conduct, for the duration of trial; he shall also report once every two months to the Board, in addition to attending the trial on the various dates fixed in that regard. The IO shall also supervise the petitioner, and report in that regard to the Board once every two months.

10. The petition is allowed, subject to the above terms. Order dasti.

DATE:

30th July, 2007

(S. RAVINDRA BHAT)

JUDGE