

VPH

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Criminal Revision Application No. 448 OF 2018

Manish Surendra Sharma,
through Surendra Sharma ... Applicant
Vs.
State of Maharashtra ... Respondent
(Wadala TT Police Station)

Ms. Maharukh Adenwalla, for the Applicant.

Mr. R. M. Pethe, APP for the Respondent - State.

CORAM : C. V. BHADANG, J.

DATE : AUGUST 31, 2020

PC :

1. This revision application was heard on Friday, 28th August, 2020, and was kept for orders today. The challenge in this revision application under S. 102 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (“Act” for short) is to the order dated 7th April, 2017 passed by the Children’s Court, thereby refusing to release the applicant on bail.

2. According to the prosecution, on 12th March, 2016 at about 11.00 p.m., the applicant alongwith others had assaulted deceased Asif Nasim Khan with sword, chopper and iron rod, resulting into his death. On the basis of a complaint lodged by the wife of the deceased, FIR No. 117 of 2016 was registered with Wadala TT Police

Station. The present applicant, who is a Child in Conflict with Law (CCL) was arrested on 15th March, 2016 and since then lodged in the Observation Home. After completion of the investigation, the applicant and the other CCLs in the matter have been proceeded before the Juvenile Justice Board (“JJ Board” for short) in Case No. 456/JW/2016.

3. It appears that on 2nd August, 2016, the applicant applied for bail before the JJ Board at Dongri, which was rejected on 12th August, 2016 on the ground that a preliminary assessment, as required by S. 15 of the Act, was to be made. It further appears that on 16th August, 2016, the JJ Board on preliminary assessment transferred the case to the Children’s Court, which was registered as Sessions Case No. 670 of 2016. The applicant applied for bail before the Children’s Court, which has been rejected by the impugned order dated 7th April, 2017.

4. The record discloses that on 7th September, 2017, the Children’s Court remitted the matter back to JJ Board for fresh preliminary assessment. The order dated 26th March, 2018 shows that there was a difference of opinion between the Presiding Magistrate and the Member of the JJ Board as to whether the applicant needs to be tried as an adult. The Principal Magistrate was of the opinion that

matter should be transferred to the Children's Court. In view of S. 7(4) of the said Act, where the opinion of the Principal Magistrate prevails, the matter has been referred to the Children's Court.

5. I have heard Ms. Adenwalla, the learned counsel for the applicant and Mr. Pethe, the learned Additional Public Prosecutor for the respondent-State. With the assistance of the learned counsel for the parties, I have gone through the record, including the report dated 21st July, 2020 from the Senior PI, Wadala TT Police Station and a report dated 21st August, 2020 from the Probation Officer, Children Aid Society, Mumbai.

6. Ms. Adenwalla, the learned counsel for the applicant placing reliance on S. 12 of the Act has submitted that notwithstanding the nature and the seriousness of the offense, the JCL is required to be released on bail, except where the bail can be refused, in view of the proviso to S. 12 (1) of the said Act. It is submitted that the applicant has now attained 21 years of age and is in the Observation Home since 15th March, 2016. She pointed out that the applicant has moved out of the locality where Anand Fernandes and others are residing, and therefore, there is no likelihood of danger to the life and limb of the applicant, nor is there any likelihood of threat from the applicant to any of the prosecution witnesses.

7. The learned Additional Public Prosecutor, in all fairness, submitted that all other persons, who have been proceeded against alongwith present applicant (JCL), have been released on bail. He submits that this Court may pass appropriate order, having regard to the report of investigating officer as well as the probation officer.

8. I have carefully considered the circumstances and the submissions made. Section 12 of the said Act in terms provides that 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, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 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 the Probation Officer or under the care of any fit person. Under the proviso to said section, a person shall not be so released if there appears to be a reasonable ground for believing that the release is likely to bring that person, into association with known criminal or expose the said person to moral, physical or psychological danger or the person's release would defeat the ends of justice. It can thus be seen that under S. 12 of the said Act, a person apprehend or detained has to be released on bail, notwithstanding the nature of the offence unless the case is covered by proviso to sub-section (1) of Section 12.

In this regard, I have gone through the report of the investigating officer as well as the Probation Officer. The report of the investigating officer in general terms speaks about the possibility of the applicant falling into the association with criminals / bad company, and speaks of possibility of he not being available for the inquiry / trial before the Children's Court. The report of the Probation Officer dated 21st August, 2020 shows that the NGO Asiana Foundation has been working with the applicant since his admission in the Observation Home, and are willing to enroll him in re-entry programme and are willing to help him in building his soft skills, support him in finding employment and supervise his progress. The report also indicates that the applicant has undergone counseling sessions on regular basis from August, 2016, and the applicant has established his image as a trusted child among the staff of the Observation Home. He leads kitchen gardening work and manages and works alongwith the fellow intimates and has shown good leadership skills. He has also actively participated in many sports and cultural activities on important events of Independence Day, Yoga Day, and motivated other inmates to perform well in the activities and supervise their performance and has shown efforts towards the behavioural change and rehabilitation.

9. The report also indicates that the mother and sister of the

applicant are residing at Nalla Sopara in their own house and are willing to take his custody. The applicant has also expressed intention to pursue career as an electrician once he is released.

10. Thus, having carefully examined the facts and circumstances of the case and further having regard to the provisions of S. 12 of the Act and the fact that all other persons proceeded against have been released on bail and the specific report of the Probation Officer, I find that the applicant can be released on bail. The apprehension expressed on behalf of the investigating officer of the applicant, either falling in bad company or not being available for the inquiry before the Children Court, to my mind, is misplaced and at any rate can be taken care of by imposing appropriate conditions.

11. In such circumstances, the following order is passed.

ORDER

- (i) The criminal revision application is allowed. The impugned order dated 7th April, 2017 is hereby set aside.
- (ii) The applicant be released on bail on executing a PR bond in the sum of Rs. 25,000/- with one or two solvent sureties in the like amount before the Children's Court.
- (iii) For the present, the applicant is permitted to furnish cash surety of Rs. 25,000/- before the Children's Court for a period of eight

weeks, after which the applicant shall furnish PR/SB, as above.

- (iv) The applicant shall furnish his permanent address alongwith proof to the satisfaction of the Children's Court.
- (v) The applicant is placed under the supervision of NGO Asiana Foundation, and the Probation Officer of the Observation Home. The Asiana Foundation / Probation Officer of the Observation Home shall submit periodic reports every three months about the progress / rehabilitation /re-integration of the applicant, to the Children's Court.
- (vi) The criminal revision application is disposed of in the aforesaid terms.

Vinayak
P.
Halemath

Digitally signed
by Vinayak P.
Halemath
Date:
2020.09.02
19:50:25 +0530

Sd/-
C. V. BHADANG, J.