
(2013) 01 P&H CK 0264

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Rev. No. 303 of 2013 (O and M)

Shimil Kumar

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision: Jan. 29, 2013

Citation: (2014) 1 Crimes 74 : (2014) 1 Crimes 528 : (2014) 1 Crimes 139

Hon'ble Judges: Mahesh Grover, J

Bench: Single Bench

Advocate: Rajesh Lamba, for the Appellant;

Judgement

Mahesh Grover, J.

The petitioner impugns the order dated 2.1.2013 of the learned Additional Sessions Judge, Palwal wherein his prayer for release on bail in terms of Section 15 read with Section 12 of the Juvenile Justice (Care & Protection of Children Act), 2000 (hereinafter referred to as the Act) was declined. The petitioner is facing proceedings in a case pertaining to the death of one Sheela Devi who went missing and was found to have been murdered.

2. The petitioner and his accomplices were stated to have caused the death of Sheela Devi and severed her head and hand which were subsequently recovered upon the disclosure statement made by them. Likewise, the slippers and the saree which the deceased was wearing, were also recovered at their behest.

3. The Juvenile Justice Board vide its order dated 20.12.2012 declined the prayer for bail which was made before it and the learned Additional Sessions Judge, Palwal upheld the same primarily on the ground that there were reasonable grounds for believing that the release of the juvenile/petitioner is likely to bring him into association with known criminals and expose him to moral, physical and psychological danger and that his release would defeat the ends of justice.

4. Learned counsel for the petitioner while impugning the order, has relied upon the provisions of Section 12 of the Act to contend that a juvenile has necessarily to be

released on bail unless or until exceptional circumstances are shown to exist which would give rise to an apprehension that his 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. He has contended that this has to be shown to exist in the order, otherwise it will result in injustice to the juvenile.

5. To examine this controversy, it would be imperative to extract the provisions of Sections 12 and 14 of the act which are as under:-

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 or placed under the supervision of a Probation Officer or under the care of any fit institution or fit person 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 incharge 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 enquiry regarding him as may be specified in the order.

6. It is now imperative to understand how a person in conflict with law can be determined to be a juvenile so as to avail himself of the benefit of Section 12, as also other intended benefits flowing from the statute. It would be purposeful to extract Section 14 of the Act here:-

14. Inquiry by Board regarding juvenile. - (1) Where a juvenile having been charged with the offence is produced before a Board, the Board shall hold the inquiry in accordance with the provisions of this Act and may make such order in relation to the juvenile as it deems fit:

Provided that an inquiry under this section shall be completed within a period of four months from the date of its commencement, unless the period is extended by the Board having regard to the circumstances of the case and in special cases after recording the reasons in writing for such extension.

(2) The Chief Judicial Magistrate or the Chief Metropolitan Magistrate shall review the pendency of cases of the Board at every six months, and shall direct the Board

to increase the frequency of its sittings or may cause the constitution of additional Boards.

7. Two aspects of the controversy would stand out as per the stages set out in Sections 12 and 14 of the Act. Section 14 is of utmost importance as this relates to an enquiry by the Board regarding a juvenile which precedes the examination of Section 12 in the context of a benefit of bail to be granted. Upon a finding recorded by the Board regarding a person in conflict with law being a juvenile, a right would be conferred in his favour to be released on bail ordinarily unless such a right is circumscribed by inhibitive factors of bringing 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.

8. Therefore, the factors that go to determine a person being a juvenile necessarily have to precede the questions begging answers in terms of Section 12.

9. The vexed questions before this Court thus are (i) as to whether the enquiry to ascertain the juvenility of an accused should be centered only on biological aspect as determinative of age? and (ii) what sort of enquiry is the Board required to make and what are the factors to be considered to determine the age of a juvenile? and (iii) What forms the basis of an apprehension of a Court that release of such a juvenile in conflict with law would endanger his own well being by bringing him into contact with criminals or men of bad influence or even on the count of defeating the cause of justice?

10. The answers to these questions in fact, create a labyrinth and myriad of thoughts.

11. Would this mean that a person who is on this side of midnight which is to usher in his eighteenth birthday, would be in a cocooned protection of law but with one chime of the clock, when he crosses over to the other side of midnight, he is rendered without a protective sheath of law, simply because on being eighteen the socio-political benefits flow to him and he is regarded as an adult with sullied innocence?

12. In fact it is the cases of these persons who are in the twilight zone of adulthood, that arouses the concerns of the Court more, particularly when such persons are involved in commission of aggravated offences.

13. Grave implications are manifest in this situation where a person derives immense benefit on account of immunity on his being a juvenile a day or hours before his attaining the age of 18 years, when accused of a dastardly act but loses them within a few hours on attaining this magical age.

14. If this would be the intention of the Legislature, then the application of such a law in its unadulterated form would make the law look preposterous. It would thus be expedient and appropriate if the Statement of Objects and Reasons of the Act is

extracted here below:-

STATEMENT OF OBJECTS AND REASONS

A review of the working of the Juvenile Act, 1986 (53 of 1986) would indicate that much greater attention is required to be given to children in conflict with law or those in need of care and protection. The justice system as available for adults is not considered suitable for being applied to a juvenile or the child or any one on their behalf including the police, voluntary organizations, social workers, or parents and guardians, throughout the country. There is also an urgent need for creating adequate infrastructure necessary for the implementation of the proposed legislation with a larger involvement of informal systems specially the family, the voluntary organizations and the community.

2. In this context, the following further proposals have been made-

- (i) to lay down the basic principles for administering justice to a juvenile or the child in the Bill;
- (ii) to make the juvenile system meant for a juvenile or the child more appreciative of the developmental needs in comparison to criminal justice system as applicable to adults;
- (iii) to bring the juvenile law in conformity with the United Convention on the Rights of the Child;
- (iv) to prescribe a uniform age of eighteen years for both boys and girls;
- (v) to ensure speedy disposal of cases by the authorities envisaged under this Bill regarding juvenile or the child within a time limit of four months;
- (vi) to spell out the role of the State as a facilitator rather than doer by involving voluntary organizations and local bodies in the implementation of the proposed legislation;
- (vii) to create special juvenile police units with a humane approach through sensitization and training of police personnel;
- (viii) to enable increased accessibility to a juvenile or the child by establishing Juvenile Justice Boards and Child Welfare Committees and Homes in each district or group of districts;
- (ix) to minimize the stigma and in keeping with the developmental needs of the juvenile or the child, to separate the Bill into two parts - one for juveniles in conflict with law and the other for the juvenile or the child in need of care and protection;
- (x) to provide for effective provisions and various alternatives for rehabilitation and social reintegration such as adoption, foster care, sponsorship and aftercare of abandoned, destitute, neglected and delinquent juvenile and child.

3. The Bill seeks to repeal and re-enact the Juvenile Justice Act, 1986 with a view to achieving the above objects.

15. Section 2(d) of the Act defines a child in need of care and protection, while Section 2(k) prescribes the age of a juvenile or a child to be a person, who has not completed 18 years of age. The same are reproduced here below:-

2. Definitions. - In this Act, unless the context otherwise requires,-

.....

(d) "child in need of care and protection" means a child

(i) who is found without any home or settled place or abode and without any ostensible means of subsistence,

(ia) who is found begging, or who is either a street child or a working child,

(ii) who resides with a person (whether a guardian of the child or not) and such person-

(a) has threatened to kill or injure the child and there is a reasonable likelihood of the threat being carried out, or

(b) has killed, abused or neglected some other child or children and there is a reasonable likelihood of the child in question being killed, abused or neglected by that person,

(iii) who is mentally or physically challenged or ill children or children suffering from terminal disease or incurable diseases having no one to support or look after,

(iv) who has a parent or guardian and such parent or guardian is unfit or incapacitated to exercise control over the child,

(v) who does not have parent and no one is willing to take care of or whose parents have abandoned (or surrendered) him or who is missing and run away child and whose parents cannot be found after reasonable inquiry,

(vi) who is being or is likely to be grossly abused, tortured or exploited for the purpose of sexual abuse or illegal acts,

(vii) who is found vulnerable and is likely to be inducted into drug abuse or trafficking,

(viii) who is victim of any armed conflict, civil commotion or natural calamity;

.....

(k) "juvenile" or "child" means a person who has not completed eighteenth year of age;

16. The aforesaid definition of a child in Section 2(d) refers to children in depraved conditions due to external factors and in need of protection warranting the attention of the society and obligating the State to take care of them and eradicate such influence of misery and deprivation. Section 2(k) on the other hand, merely defines a juvenile to be a child who has not completed eighteen years of age.

17. There is thus no distinction made by the Act between a juvenile in serious conflict with law and a destitute child who needs care and protection. Rights of both under the statute would be circumscribed by the limit of 18 years as per section 2(k).

18. But does this mean that in a case where the Court is dealing with a child or a juvenile in conflict with law, the benefit of the protection of the Act would be afforded to him without even ascertaining these factors mentioned in section 2(d)(iii), (iv), (v), (vi), (viii) and the Board would proceed to determine this question solely on the basis of a person attaining the age of 18 years giving primacy only to the biological aspects.

19. To the mind of this Court, over emphasis on the question of age in the cases of those above seventeen years of age but less than eighteen years as significant and determinative would be a fallacy fraught with dangers of absurdity causing acute damage and injustice to the victim in particular and society at large.

20. The word child connotes "one who is between birth and full growth". This would reflect upon the biological aspect. The word "childlike" has been defined by Oxford as "cedulous", "foolish", "immature", "infantile", "juvenile", "naive".

21. Thus when we proceed to determine whether a person is a juvenile, it would depend upon both, his physical growth which exemplifies adolescence coupled with his behaviour, with emphasis on the latter, because it is his conduct or rather grave misconduct that has brought him in conflict with law and society.

22. Declaration of the age of the child who is in conflict with law by mere reliance upon a School Leaving Certificate or even a positive proof of the certificate of registration of birth ipso facto should not be the foundational basis to declare a person juvenile more particularly, when such a juvenile is accused of having committed a heinous offence particularly when days or few months separated him from adulthood.

23. One necessarily has to understand that in a country like ours and especially in a strata which is ignorant of even the basic requirement of getting a birth registered, there would be no conclusive proof of age and the age given in the school certificate or the records of the school would only speak of an age imaginatively conjured by the parents at the time of admission of such a child. Even though it may form a persuasive piece of material, but certainly no credence and outright acceptability should be afforded to it. One may also keep in mind that quite a few births will take place in homes and not in hospitals. If the birth takes place in the hospital, there

would possibly be a record and a consequent registration establishing a correct date of birth but not in other cases. Factors such as ossification tests etc. may also be considered but they themselves are in determinative and not reliable and can form only collateral material in an enquiry.

24. But in the cases of aggravated offences, what is of importance to establish whether a person is a child or not, is his ability to comprehend what is right and what is wrong, what is lawful and what is unlawful and whether he understands the consequences of his actions. It is the advancement of his mental faculty that would suggest whether he is an adult or a juvenile and for this purpose, there has to be a specialized examination of the child at the hands of experts who can evaluate the ability of such a child to segregate good and bad, the lawful and unlawful and the consequences ensuing therefrom and this would show his maturity or immaturity to answer for his deeds.

25. It is the factors related to growth and maturity psychologically and socially, but not entirely biologically, which would give an insight as to whether a person is a child or an adult and merely because the age of 18 years would confer a lot of social and political privileges in a civil society, would not certainly mean that a person before attainment of such an age continues to remain a child and eluding adulthood, while he in his conduct otherwise demonstrates the capability of correct comprehension.

26. It is, therefore, the competence of a juvenile which has to be established before the Board and the Board and the courts ought not to automatically assume that the statutory definition would confer the halo of a juvenile and give him an undeserving protection and benefits.

27. Apart from determining such abilities, an enquiry should also establish the social factors surrounding such a person in conflict with law, as they also possibly may reveal the cause of a distorted or a perverted mind set, which may eventually lead to an appreciation of the ability of correct comprehension.

28. After the Juvenile Justice Board and the court concerned have addressed the afore-expressed concern which can be achieved by involving a professional psychologist/psychiatrist and sociologists, the Board can then proceed to determine the second aspect as to whether to release a juvenile on bail which would now be dependent upon the first question because if a person is found capable of comprehending what is right and wrong, and is enabled to understand sufficiently his actions, then as an automatic corollary it should follow that release of such a person on bail would defeat the ends of justice and the remaining aspects of the likelihood of a child coming into contact with any known criminal or exposing him to moral, physical or psychological danger, would be questions dependent solely on factors and inferences which such facts may throw up.

29. The milder offences and deviant behaviour requiring the minimum correctional approach is adequately addressed by the provisions of Section 15 and it is only those cases where diabolic and monstrous acts are committed by a child in conflict with law that hackles of concerns are raised.

30. Apprehensions as to whether a release of a juvenile would be detrimental to him and bring him in association with moral or physical danger, would depend upon the facts of each case. But in cases where a juvenile has been accused of aggravated offences which shock the conscience of the society, it would be safer to protect him from collective wrath of a community or a society, on account of retribution such a dastardly act may possibly invite.

31. Factors preceding the commission of an offence, his collaborators and accomplices would be the indices for a person being endangered by evil influence, and likewise the Board and the Court have to imaginatively conceive of succeeding consequences to the offence, to conclude regarding the safety of a juvenile.

32. All these aspects are extremely significant for they would reflect and play upon the mind of the Court, when it considers the question of sentence to be visited upon a juvenile in conflict with law.

33. Reverting to the facts of the case, this Court finds that the Board and the Court both did not resort to such an exercise which would conclusively address the concerns expressed above. The matter is thus remitted back to the Juvenile Justice Board to take into consideration the aspects noticed above keeping in view the serious offences of which the petitioner has been accused of.

The petition is therefore, rejected with a direction that the matter be re-considered in the light of the above.