

# Vikas vs The State Of Madhya Pradesh on 22 October, 2020

**Author: Sanjay Dwivedi**

**Bench: Sanjay Dwivedi**

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Cr.R. No.1800/2020

THE HIGH COURT OF MADHYA PRADESH  
PRINCIPAL SEAT AT JABALPUR

Criminal Revision No.1800/2020

Vikas  
Versus  
State of M.P.

Date of Order	22.10.2020
Bench Constituted	Single Bench
Order delivered by	Hon'ble Mr. Justice Sanjay Dwivedi
Whether approved for reporting	Yes
Name of counsel for parties	For applicant: Mr. Jafar Khan, Advocate. For Respondent/State: Ms. Shweta

Yadav, Panel Lawyer.

Law laid down Bail cannot be claimed by a juvenile as a matter of right - If the juvenile committed a heinous crime and if his release on bail defeats the 'ends of justice'; also shakes the conscience of the society and virtually it is a threat to the society too then the bail to a juvenile can be denied by the Court.

(O R D E R) (22.10.2020) Although this matter is listed for consideration of I.A. No.7896/2020, an application for grant of bail, but considering the facts and circumstances and also the arguments advanced by learned counsel for the parties, this matter is heard finally.

2. This criminal revision under Section 102 of the Juvenile Justice (Care and Protection of Child) Act, 2015 (hereinafter referred to as the 'Act, 2015') has been filed by the applicant for grant of bail in connection with Crime No.35/2020 registered at Police Station Makroniya, District Sagar for the offence punishable under Sections 302 and 201 of the Indian Penal Code.

3. As per the allegations attributed against the present applicant, on 28.01.2020, the complainant Chain Singh has lodged a dehati nalisi that his brother namely Ramgopal Patel resides at Gali No.3, Anand Nagar, Makroniya with his family but since last four to five days despite trying to contact him

on phone, neither he was connecting nor responding. Thereafter, the complainant went to his brother's house and found that his house was locked, and on inquiring from the children of the school when nothing was found, then he came back to his brother's house and shifted the glass of the window then saw that the dead bodies of his brother, sister-in-law and his nephew Adarsh were lying on the floor. The present applicant was not present in the house and his mobile was switched off. The complainant doubted over the conduct of the present applicant and as such, informed the police and then dehati nalisi was registered and investigation was started by the police and ultimately, it is found that the present applicant committed murder of his mother, father and brother.

4. Learned counsel for the applicant submits that the applicant is a juvenile and in jail since 30.01.2020. He further submits that this Court on earlier occasion has called the report regarding conduct of the applicant during the period of custody and as per the said report, nothing unusual is found in the conduct of the applicant and his behaviour was also normal. He also submits that considering the period of custody of the applicant who is a juvenile, he may be enlarged on bail.

5. In compliance to the order passed by this Court on 08.10.2020, Mr. J.P. Thakur, Incharge Town Inspector, PS Makroniya, District Sagar is present today through video- conferencing alongwith the case-diary with learned Panel Lawyer for the respondent/State to apprise this Court about the conduct of the applicant/accused. In turn, he has informed that the conduct of the applicant is normal and nothing unusual is reported against him. However, learned Panel Lawyer submits that looking to the gravity of the offence committed by the applicant/accused, he is not entitled to be released on bail and this revision deserves to be dismissed.

6. I have considered the arguments advanced by learned counsel for the parties. Section 12 of the Act, 2015 deals with grant of bail to a juvenile and provides as to under what parameters, the bail can be considered. In assessing the merit of rival submissions, it would, at the outset, be necessary to advert to Section 12 of the Act, 2015:-

"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 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) When such person having been apprehended is not released on bail under sub-

section (1) by the officer-in-charge of the police station, such officer shall cause the person to be kept only in an observation home in such manner as may be prescribed until the person can be brought before a Board.

(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.

(4) When a child in conflict with law is unable to fulfil the conditions of bail order within seven days of the bail order, such child shall be produced before the Board for modification of the conditions of bail."

As per learned counsel for the applicant, considering the conduct of the applicant, he is entitled to be released on bail irrespective of the gravity of offence committed, but in the opinion of this Court the consideration for grant of bail to a juvenile delinquent though is entirely different than that of normal consideration of granting bail but still the Court has to consider whether his release would defeat the 'ends of justice'. In my opinion, the words 'ends of justice' should be confined to the fact which shows that grant of bail itself is likely to result in injustice and as per the exception provided under Section 12 (1) of the Act, 2015 if the Court finds that release would defeat the 'ends of justice' then bail can be denied to a juvenile. Although, various High Courts in most of the cases while dealing with the provisions of grant of bail as per Section 12 of the Act, 2015 have adopted an approach that a juvenile can be considered to be released on bail irrespective of gravity of offence but I am not convinced that the bail can be claimed by a juvenile as a matter of right and can be granted to the juvenile without considering the gravity of offence and nature of crime committed by him. As per the provisions of Section 12 of the Act, 2015, it is clear that there was no intent of the legislature to consider the grant of bail to a juvenile as his absolute right and that is why it carved out an exception under which bail can be denied, otherwise there was no occasion to attach proviso with Section 12(1) of the Act, 2015. My view gets strength by the view taken by the Supreme Court in the case of Om Prakash Vs. State of Rajasthan and another reported in (2012) 5 SCC 201 in which the Supreme Court in paragraphs-3 and 23 of its judgment has observed as under:-

"3. The Juvenile Justice Act was enacted with a laudable object of providing a separate forum or a Special Court for holding trial of children/juveniles by the Juvenile Court as it was felt that children become delinquent by force of circumstance and not by choice and hence they need to be treated with care and sensitivity while dealing and trying cases involving criminal offence. But when an accused is alleged to have committed a heinous offence like rape and murder or any other grave offence when he ceased to be a child on attaining the age of 18 years, but seeks protection of the Juvenile Justice Act under the ostensible plea of being a minor, should such an accused be allowed to be tried by a Juvenile Court or should he be referred to a competent court of criminal jurisdiction where the trial of other adult persons are held?

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23. Hence, while the courts must be sensitive in dealing with the juvenile who is involved in cases of serious nature like sexual molestation, rape, gang rape, murder and host of other offences, the accused cannot be allowed to abuse the statutory protection by attempting to prove himself as a minor when the documentary evidence to prove his minority gives rise to a reasonable doubt about his assertion of minority. Under such circumstance, the medical evidence based on scientific investigation will have to be given due weight and precedence over the evidence based on school administration records which give rise to hypothesis and speculation about the age of the accused. The matter however would stand on a different footing if the academic certificates and school records are alleged to have been withheld deliberately with ulterior motive and authenticity of the medical evidence is under challenge by the prosecution."

However, in the case of Om Prakash (supra), there was some dispute with regard to the age of the accused but it is clearly observed by the Supreme Court while considering the crime committed by the juvenile and also considering the beneficial legislation i.e Act, 2015, has observed that the gravity of offence and nature of crime cannot be ignored. In the case of Raju Vs. State of U.P. and ors the High Court of Allahabad in Criminal Revision No.2492/2017 also taking note of the view taken by the Supreme Court in the case of Om Prakash (supra), while considering the provisions of Section 12(1) of the Act, 2015 has observed as under:-

"30. Thus, it is no ultimate rule that a juvenile below the age of 16 years has to be granted bail and can be denied the privilege only on the first two of the grounds mentioned in the proviso, that is to say, likelihood of the juvenile on release being likely to be brought in association with any known criminal or in consequence of being released exposure of the juvenile to moral, physical or psychological danger. It can be equally refused on the ground that releasing a juvenile, that includes a juvenile below 16 years would "defeat the ends of justice." In the opinion of this Court the words "defeat the ends of justice"

employed in the proviso to Section 12 of the Act postulate as one of the relevant consideration, the nature and gravity of the offence though not the only consideration in applying the aforesaid part of the disentitling legislative edict. Other factors such as the specific need for supervision or intervention, circumstances as brought out in the social investigation report and past conduct of the child would also be relevant that are spoken of under Section 18 of the Act."

Further, the High Court of Allahabad has also in the case of Sanjay Kumar Vs. State of U.P. in Criminal Appeal No.1481/2002 while dealing with the provisions of Section 12 of the Act, 2015 has observed that if a juvenile accused is arrested or detained or appears or is brought before a Board, such person shall be released on bail but he shall not be so released if there appears 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'. In the case of Harsh Bhavi Vs. State of Rajasthan, the High Court of Rajasthan (Jaipur Bench) in Criminal Revision No.437/2018, while dealing with the case of release of a juvenile on bail who was aged about 17 years, and had committed the offence of kidnapping and murder of a minor child aged about 16 years, has observed as under:-

"6. Protection granted under Section 12 of the Juvenile Justice (Care and Protection of Children) Act 2015 is claimed on behalf of juveniles who are in conflict with law. But at the same time the child who is in need of care and protection, his interest is also to be watched by the Courts. Further, Section 12 also speaks that the juvenile shall not be released if it appears that his release would defeat the ends of justice. If viewed from this angle, it appears that if in the case in hand bail is granted to the petitioner then it will be a gross injustice qua the child who had been victim of the offence and the society at large also. By showing misplaced sympathy to the petitioner who has perpetrated the offence of kidnapping and then murder, the victim and the society will be denied justice which is not the intention of the Act of 2015."

Here, in the present case also as observed by the Court below while rejecting the application for release the juvenile on bail that before committing a crime, the behaviour of the applicant was also not proper as earlier also he had stolen money from his parents and had run away from the house. He was very stubborn and used to steal money by using the ATM card of his parents which clearly indicates that he was of mature mind, even though he was aged below 18 years and the manner in which he has committed the crime shows that he has sound mind and was also fully aware of the crime which he was committing. Further, it has been observed that even after committing the crime, he had not shown remorse or regret in any form.

7. However, as per the case of the prosecution, at the time of committing the offence, the juvenile was aged about 17 years and was near to the age of majority. The applicant has committed the offence which undoubtedly is of a grave nature, killing his mother, father and brother for no reason but money, and spent almost two days with the dead bodies of his family members and thereafter even enjoyed his father's money, which he received out of his retiral dues, hence this Court cannot ignore this aspect. Furthermore, from the conduct of the applicant/accused, it can easily be gathered that his mental status seems to be stable and the offence which he has committed just to quench his thirst of money, shocks the conscience of the society and infact it is a threat to the society too. The Juvenile Justice Bill was passed in the Lok Sabha on 07th May, 2015 and in the Rajya Sabha on 22nd December, 2015 vide Bill No.99-C/2014 proposing that a minor in the age group of 16 to 18 years to be tried as an adult if they commit a heinous crime. As a general parlance, bail is the rule in the case of a juvenile and places the burden for denying the bail on the prosecution to show that on the parameters specified in the proviso to Section 12 of the Act, 2015, bail should be denied to a juvenile. But here in this case, I am of the opinion that since at the time of committing the offence, the age of the applicant was 17 years and if he is released on bail the expression defeat the 'ends of justice' would frustrate the confidence as repose for the society. Indeed, the parents are murdered by the applicant and in the event of his release, there is no guardian to take care of him which would create every possibility for the applicant to get associated with the hardcore criminals. No doubt, the

Juvenile Act is a beneficial legislation intended for reformation of the juvenile/child in conflict with law, but the law also demands that justice should be done not only to the accused, but also to the accuser. Thus, while considering the room for granting the bail to a juvenile, the Court has to consider the surrounding facts and circumstances. The alleged act of the applicant/accused itself shakes the conscience of the society. The offence is obviously heinous in nature as it is a case of triple murder that too murder of his blood relations i.e. mother, father and brother by an adolescent aged about 17 years and if he is released on bail, it would defeat the 'ends of justice'.

8. In view of the overall facts and circumstances, I am of the opinion that the present revision filed under Section 102 of the Act, 2015 does not deserve to be allowed and accordingly, the same stands rejected. The order passed by the Court below rejecting the request for grant of bail to the applicant is hereby affirmed.

(SANJAY DWIVEDI) JUDGE Devashish