

IN THE HIGH COURT OF KARNATAKA

DHARWAD BENCH



DATED THIS THE 12TH DAY OF JULY, 2023

BEFORE

THE HON'BLE MR JUSTICE ANIL B KATTI

CRIMINAL REVISION PETITION NO. 100453 OF 2022

BETWEEN:

...PETITIONER

(BY SRI. IRANAGOUDA K. KABBUR AND
SRI. SHIVAKUMAR N. BENDIGERI, ADVS.)

AND:

- 1 . THE STATE OF KARNATAKA,
DHARWAD TOWN POLICE STATION
REPRESENTED BY S.P.P.
HIGH COURT OF KARNATAKA
DHARWAD.

...RESPONDENTS

(BY SRI. PRAVEEN UPPAR, HCGP FOR R1,
R2 SERVED)

THIS CRIMINAL REVISION PETITION IS FILED U/SEC. 102 OF JUVENILE JUSTICE ACT 2015 SEEKING TO SET ASIDE THE ORDER DATED 04.06.2022, PASSED BY THE II ADDITIONAL SESSIONS JUDGE, DHARWAD IN CRIMINAL APPEAL NO. 35/2022 AND ORDER DATED 11.03.2022, PASSED BY THE JUVENILE JUSTICE BOARD AT DHARWAD IN JC NO. 10/2022 (DHARWAD TOWN PS CRIME 222/2021) FOR THE OFFENCES PUNISHABLE U/SEC. 354, 354D, 363, 366(A), 376D, 34 OF IPC AND U/SEC. 4,6,8, AND 14 OF POCSO ACT, SECTION 67(B) OF INFORMATION TECHNOLOGY ACT, SECTION 3(1)(w), 3(2)(va) OF SC/ST (P.A.) ACT AND RELEASE THE REVISION PETITIONER/CCWL NO.4 ON BAIL BY ALLOWING THIS REVISION PETITION.

THIS CRIMINAL REVISION PETITION COMING ON FOR ORDERS AND THE SAME HAVING BEEN HEARD AND RESERVED FOR ORDER ON 20.06.2023, THIS DAY, THE COURT, MADE THE FOLLOWING:

ORDER

Appellant/CCWL-4 feeling aggrieved by the order passed by first Appellate Court on the file of II Addl. District and Sessions and Special Judge, Dharwad, in Crl.A.No.35/2022 dated 04.06.2022 preferred this appeal.

2. Parties to the petition are referred with their ranks as assigned in the trial Court for the sake of convenience.

3. The factual matrix leading to the case of prosecution can be stated in nutshell to the effect that CCWL-1 was following and teasing victim girl since one year and was pressurizing her to love him. In the month of August 2021, on Saturday CCWL-1 came to Basel Mission College, Dharwad, along with CCWL-7 and by force took victim in bus near KUD

where CCWLs-2, 4 and 6 joined them and then victim was taken on bike near Om Ashram. CCWLs- 6 and 7 also reached the said place, CCWL-7 kissed and touched body of victim and tried to undress her. Thereafter, CCWL-7 ran away from the spot by seeing the incident. CCWLs-1 to 7 have committed forcible sexual intercourse upon victim by using condom. They have video-graphed incident through mobile with CCWL-2 and all of them administered threat to victim not to disclose about the incident to anybody. After one week, CCWL-1 again came to Basel Mission College and met victim on showing video of earlier incident pressurized victim to come to Suryanagara. CCWLs-2 to 4, 6 and 8 threatened that if she discloses about the incident to anybody they are going to viral the video in social media. CCWLs-2, 4 and 6 have committed forcible sexual intercourse again on victim and further threatened to kill her, if she discloses about the incident to anybody. On these allegations made in the complaint, case was registered in Dharwad town police station in Cr.No.222/2021 for the offences punishable under Sections 354, 354(D), 363, 366(A), 376D read with 34 IPC, Sections 4, 6, 8 and 14 of the POCSO Act, 2012. On completion of investigation, charge-sheet is filed.

4. In response to notice, learned High Court Government Pleader for respondent No.1/State is present. Respondent No.2 though served remained absent. Learned High Court Government Pleader has not filed any separate objections. However, under memo dated 20.06.2023 has produced documents.

5. Heard the arguments of both sides.

6. On careful perusal of the charge-sheet material and complaint filed by victim, it would go to show that allegations are against all CCWLs having committed penetrative sexual assault on victim. The incident of sexual assault is alleged to have been video-graphed through the mobile of CCWL-2.

7. The earlier bail application filed by CCWL-4 at crime stage before Juvenile Justice Board came to be rejected on 10.01.2022. The appeal filed against the said order in Crl.A.No.10/2022 also came to be dismissed by order dated 08.02.2022. After filing charge-sheet, fresh bail application was filed before Juvenile Justice Board on 11.03.2022 which came to be rejected which is challenged before the first Appellate Court on the file of II Addl. District and Sessions and Special Judge, Dharwad, in Crl.A.No.35/2022. The first

Appellate Court by order dated 04.06.2022 dismissed the appeal.

8. The charge-sheet material would go to show that the age of appellant/CCWL-4 is 17 years and the date of birth of victim girl is 29.06.2004. Appellant and victim both were minors as on the date of incident. The charge-sheet material would reveal that CCWLs-1 to 6 have committed penetrative sexual assault on the victim.

9. Learned counsel for the appellant argued that consideration of regular bail under Section 439 of Cr.P.C. and the bail application under Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as 'JJ Act') are different. The nature and gravity of offence is not a matter required to be considered while deciding the application filed under Section 12 of the JJ Act.

10. Per contra, learned High Court Government Pleader for respondent/State has argued that there are serious allegations against appellant/CCWL-4 of committing penetrative sexual assault on victim and the incident has been video-graphed through the mobile of CCWL-2. Therefore, appellant/CCWL-4 is not entitled for bail.

11. Learned counsel for appellant relies on the judgment of Hon'ble Apex Court in **SAMPURNA BEHURA VS. UNION OF INDIA AND OTHERS [(2018) 4 SCC 433]** wherein the Hon'ble Apex Court has issued directions to the concerned authority for implementation of provisions of the JJ Act.

12. Learned counsel for appellant relied on the judgment of Punjab and Haryana High Court at Chandigarh in **VISHVAS VS. STATE OF PUNJAB** in CRR No.53/2021 disposed of on 08.02.2021 wherein on analyzing Section 12 of the JJ Act held that gravity of offence is immaterial in deciding the bail application. The bail of a child in conflict with law cannot be rejected in a routine manner and if the bail is declined, a reasoned order has to be given by the Board. A juvenile has to be released on bail mandatorily unless and until the exceptions carved out in proviso to Section 12 (1) of the JJ Act, 2015, itself are made out. The exceptions are noted being:

"a) a reasonable ground for believing that the release is likely to bring the juvenile into association with any known criminal;

- b) *his release is likely to expose him to any moral, physical or psychological danger; and*
- c) *his release would defeat the ends of justice."*

In view of the principles enunciated in the aforementioned judgment, it is evident that while dealing with the exceptions enumerated under Section 12 of the JJ Act there must be material evidence on record to invoke exception a) known criminal, b) expose made to any morale, physical or psychological danger and c) 'defeats ends of justice'. The third exception namely ends of justice being defeated has to be considered in the context of welfare of the juvenile.

13. In view of Section 13 (1)(ii) of JJ Act, 2015, no sooner CCWL is apprehended and produced before the JJ Board, the Probation Officer has to be informed. The JJ Board has to call for Social Investigation Report which has been defined in Rule 2 (xvii) of the Juvenile Justice (Care and Protection of Children) Model Rules, 2016 (hereinafter referred to as 'Rules'). The said report becomes vital for enquiry to be done by the Board while passing orders in relation to such child as it deems fit under Sections 17 and 18 of the JJ Act. Rule 10 envisages post-production processes by the Board and the

Social Investigation Report for children in conflict with law has to be secured in Form No.6.

14. In the present case, it appears from the records that the JJ Board has called for the report from Dharwad Institute of Mental Health and Neuro Sciences, Belagavi Road, Dharwad, with regard to mental condition of all CCWLs. The learned High Court Government Pleader has produced the certified copy of the report submitted by DIMHANS. The report would reveal that apart from medical condition of CCWL, the family background and other requirements have been collected. However, in terms of Rule 10 of the Rules, Social Investigation Report for children in conflict with law has to be secured in Form No.6 from Probation Officer/Voluntary/Non-governmental Organization.

15. Learned counsel for appellant in support of his contention that JJ Board was under legal obligation to secure Social Investigation Report from the Probation Officer and the said report has to be taken into consideration while deciding the bail application filed under Section 12 of the JJ Act, relied on the latest judgment of Allahabad High Court in **XXX JUVENILE VS. STATE OF UTTAR PRADESH AND ANOTHER**

disposed of on 25.04.2023. The Social Information Report of Probation Officer has to be the basis for the JJ Board while deciding the bail application or to pass any order keeping in mind the welfare and well being of the child. It has been further held that the gravity of the offence is not a relevant consideration for declining the bail to the juvenile. A juvenile can be denied the concession of bail of any of the three contingencies specified under Section 12 (1) of the JJ Act, 2015 is available. The Social Investigation Report from the Probation Officer has to be obtained within the time slot fixed in terms of Section 13 (1) of the JJ Act in Form No.6. The Hon'ble Allahabad High Court in paragraph 20 of its judgment has held as follows:

"20. 'Form - 6' of the Juvenile Justice (Care and Protection of Children) Model Rules, 2016, contains a detailed proforma of the social investigation report. The report has three parts; the first part requires the Probation Officer to give the data or information regarding the close relatives in the family, delinquency records of the family, social and economic status, ethical code of the family, attitude towards religion, the relationship amongst the family members, the relationship with the parents, living conditions, etc. Thereafter, the report requires the Probation Officer to provide the child's history regarding his mental

condition, physical condition, habits, interests, personality traits, neighbourhood, neighbours' report, and school, employment, if any, friends, the child being subject to any form of abuse, circumstances of apprehension of the child, mental condition of the child. The most important part of the report is the third part i.e., the result of inquiry where the Probation Officer is required to inform the Board about the emotional factors, physical condition, intelligence, social and economic factors, suggestive cause of the problems, analysis of the case including reasons/contributing factors for the offence, opinion of experts consulted and recommendation regarding rehabilitation by the Probation Officer/Child Welfare Officer. It is incumbent upon the Juvenile Justice Board to take into consideration the social investigation report and make an objective assessment on the reasonable grounds for rejecting the bail application of the juvenile."

16. Keeping in mind the above referred legal requirement for deciding the bail application of CCWL in terms of Section 12 of the JJ Act, the Social Assessment Report obtained by the JJ Board from DIMHANS, Dharwad, as produced by the learned Government Pleader is perused though not in prescribed Form No.6 by the Probation Officer. The report with reference to CCWL-4 goes to show that in the first part regarding mental and physical capacity to commit alleged offence, it is reported that neglect/poor supervision by the

family members. Intellectual disability is reported as IQ-104 average intelligence. In the second part - family history, it is reported that family belongs to middle socio economic status, father committed suicide, single parenting and poorly attached to family members. School history reveals that he is a dropped out student of I PUC and no history of child labour. Peer relationships - negative peer influences, spends more time with peer groups, hence, more vulnerable to peer influences. Regarding abuse and trauma - no history suggestive of abuse and trauma. In third part, child's knowledge of consequences of committing the alleged offence, it is reported that child's understanding of social/interpersonal and legal consequences of committing offence is reported to be poor and other observation is concealing about information related to the incident. The recommendations are family counseling, individual therapy - life style modification/life skills training. Long term follow up with mental health professionals, vocational rehabilitation/training.

17. If the said report is taken into consideration and tested in the light of guidelines enumerated in the aforementioned judgment of Hon'ble Allahabad High Court, then it is evident that the same would not meet the triple test

envisaged under Section 12 (1) of the JJ Act to deny bail to juvenile.

18. The first Appellate Court while declining bail to juvenile CCWL-4 in paragraph 28 of its order referred to the judgment of Hon'ble Apex Court in **OM PRAKASH VS. STATE OF RAJASTHAN AND OTHERS [2012 (5) SCC 201]**. I have carefully gone through the referred judgment of Hon'ble Apex Court wherein it has been observed and held at paragraph 37 as follows:

"In view of the aforementioned discussion and analyses based on the prevailing facts and circumstances of the case, we are of the view tht respondent No.2 Vijay Kumar and his father have failed to prove that respondent No.2 was a minor at the time of commission of offence and hence, could not have been granted the benefit of the Juvenile Justice Act which undoubtedly is benevolent legislation but cannot be allowed to be availed of by an accused who has taken the plea of juvenility merely as an effort to hide his real age so as to create a doubt in the mind of the Courts below who thought it appropriate to grant him the benefit of a juvenile merely by adopting the principle of benevolent legislation but missing its vital implication that although the juvenile Justice Act by itself is a piece of benevolent legislation, the protection under the same cannot be made available to the accused who infact is not a juvenile but seeks shelter merely by using it as a protective umbrella or statutory shield. We are

under constraint to observe that this will have to be discouraged if the evidence and other material on record fail to prove that the accused was a juvenile at the time of commission of the offence."

The Hon'ble Apex Court having found that there is no evidence to prove the minority of accused ordered to send the accused for trial of Court competent jurisdiction where the trial is pending.

19. In the present case, CCWL-4 has not taken plea of juvenility merely as an effort to hide his real age to avail the benefit under the JJ Act. The first Appellate Court in paragraph 20 of its order has recorded specific finding that age of CCWL-4 is 17 years. The preliminary individual assessment report for Juvenile Justice Board obtained by the Juvenile Board would also reveal that the age of CCWL-4 is 17 years. Therefore, the aforementioned judgment of Hon'ble Apex Court has no application to the facts of the present case and muchless, the judgment of Hon'ble Apex Court does not deal with the bail application of juvenile in terms of Section 12 of the JJ Act. The welfare and well being of the CCWL-4 can be taken care of by his mother and she is a fit and proper person to keep CCWL-4 under her custody. Therefore, in the light of the judgment of

Hon'ble Punjab and Haryana High Court and Hon'ble Allahabad High Court referred above, CCWL-4 is entitled for bail. Consequently, proceed to pass the following:

ORDER

Revision petition filed by the guardian - mother of CCWL-4 is hereby allowed.

The order of the first Appellate Court on the file of II Addl. District and Sessions Judge and Special Judge, Dharwad, in Crl.A.No.35/2022 dated 04.06.2022 is set aside.

CCWL-4 is ordered to be released on bail on natural guardian - mother executing personal bond and surety bond for Rs.1,00,000/- with one surety for likesum amount to the satisfaction of the JJ Board, Dharwad, subject to following conditions:

- i) Guardian - mother of CCWL-4 furnishing and undertaking that upon release on bail of CCWL-4 will not be permitted to go into contact or association with any note criminal or allowed to be exposed to any morale or physical or psychological danger and further she will ensure that the juvenile will not repeat the offence,

- ii) Mother of CCWL-4 further furnish undertaking that juvenile will either pursue his studies or encourage to do constructive activities and not to be allowed to waste his time in unproductive and excessive recreational pursuits,
- iii) Juvenile and his mother will report to the Probation Officer on first of every three months' commencing from 1st August, 2023, and if same falls on holiday, then on the following working day,
- iv) The Probation Officer shall keep a strict vision on the activities of juvenile - CCWL-4 and regularly draw up his social investigation report that would be submitted to the Juvenile Justice Board, Dharwad.

The registry is directed to transmit the records with the copy of this judgment to trial Court.

**(Sd/-)
JUDGE**

Jm/-