2002 M L D 1817

[Karachi]

Before S. Ahmed Sarwana, J

Raja AMANULLAH and another---Applicants

versus

THF STATE --- Respondent

Criminal Bail Application No. 138 of 2002, decided on 26th April, 2002.

(a) Juvenile Justice System Ordinance (XXII of 2000)---

----Preamble, Ss-2(b), 3, 5, 7, 8 & 10---Object of Juvenile Justice System Ordinance, 2000---Juvenile Justice System Ordinance, 2000 had been promulgated to provide for protection to children involved in criminal litigation and their rehabilitation in the society---Juvenile Justice System Ordinance, 2000 had to be given a liberal interpretation to achieve its objects and to create conditions and environment so that children below the age of '18 years involved in criminal litigation could be provided an opportunity to become useful and respectable members of society---Person below 18 years of age would be entitled to benefits and privileges under Juvenile Justice-System Ordinance, 2000---No child would be charged with or tried for an offence together with an adult and child would have right of legal assistance at the expense of State--Proceedings of Juvenile Court would not be published through print media---Child in ordinary course would be released on bail or placed under custody of a Probation Officer and no punishment of death would be awarded to him and he would not be handcuffed, put in fetters or given any corporeal punishment.

Siraj Din v. Saghreeruddin and another 1970 SCMR 30 ref.

(b) Criminal Procedure Code (V of 1898)---

--- S. 497, first proviso---Penal Code (XLV of 1860), Ss.302/337-A (i) (iii)/337-F(ii)/114/147/148---Juvenile Justice System Ordinance (XXII of 2000), Ss.2(b) & 10---Grant of bail to child---Medical certificate issued by Civil Surgeon showed that on the date when offence was committed, age of accused was below 18 years---Accused who at the time of commission of offence had not attained age of 18 .years. Were children and, were entitled to grant of bail---Bail was granted to accused in circumstances.

Manzoor Ahmad Junejo, for Applicants.

Muhammad Iqbal Menton for the State.

Date of hearing: 26th April, 2002.

ORDER

Raja Amanullah and Naseer (applicants) are being tried for offences under sections 302, 337-A(i)(ii), 337-F(ii), 114, 147 and 148, P.P.C", in Crime No.9 of 2002, Police Station, Kandhra. They filed an application for bail under section 497(1), Cr.P.C. before the 1st Additional Sessions 'Judge/Juvenile Court, Sukkur in Sessions Case No. 54-A, of 2000. On 12-3-2002 the bail application was rejected by the Additional Sessions Judge on the ground that the applicants with several other accused- were

involved in a heinous offence of murder which is punishable with death under section 302, P.P.C. and that in the F.I.R. active role had been attributed to them in the commission of the offence. The applicants have filed the present bail application before this Curt under section 497(1),. Cr.P.C. read with sections 2(b) and 7 of the Juvenile Justice System Ordinance, 2000.

Mr. Junejo, learned Counsel for the applicants, submitted that the applicants were children meaning thereby that they were under the age of 18 years and consequently were entitled to special treatment including the concession of bail and referred to the case of Siraj Din v. Sagheerdin and another 1970 SCMR 30 in support of his argument. He added that the Civil Surgeon, Sukkur Hospital had determined their ages to be from 17 to 18 years and 16 to 18 years respectively and, therefore, were entitled to bail even if they were involved in murder as the Honourable Supreme Court in a case of capital punishment had granted bail to the minor accused on the ground that the age of the applicant based on X-Ray examination in that case was between 16 and 17 years.

Mr. Memon, learned State Counsel, supported the judgment of the' 3rd Additional Sessions Judge and vehemently opposed the grant of bail. He urged that the applicants were involved in a heinous crime and under the certificate issued by the Civil Surgeon, they.-could be regarded as 18 years of age because the Medical Officer had not expressed a definite opinion about their age but had given an approximate figure and the estimate on the higher side should be taken to be the age of the applicants for granting the concession of bail but was not able to refer to any judgment of any High Court or of the Supreme Court in support of his contention.

I have considered the arguments advanced by both learned counsel, checked the relevant law and my conclusion is as follows:

The Juvenile Justice System Ordinance, 2000, has been promulgated, inter alia, to provide for protection of children involved in criminal litigation and their rehabilitation in society. Being a beneficial legislation for the welfare of the children involved in criminal offences, it has to be given a liberal interpretation to achieve its objects to create conditions and environment so that children below the age of 18 years involved in criminal litigation may be provided an opportunity to become useful and honourable members of the society.

Under section 2(b) of the said Ordinance a child has been defined as follows:-- .

> "Child means a person who at the time of the commission of the offence, has not attained the age of 18 years." .'

Therefore, any person who at the a of committing an offence is below 18 years of age, he shall come within the definition of a child and shall be entitled to the benefits and privileges under the Juvenile Ordinance; like, no child shall be charged with or tried for an offence together with an adult (section 5), every child shall have the right of legal assistance at the expense of the State by an Advocate of at least five years standing at the Bar (section 3), the presence of the general public except certain specified persons shall be excluded from the trial (section 6), the proceedings of the Juvenile Court shall not be published in any newspaper, magazine or journal in any form which may directly or indirectly lead to the identification of such child (section 8), the child shall in the ordinary course be released on bail or placed under the custody of a Probation Officer and no punishment of death be awarded to him and he shall not be handcuffed, put in fetters or given any corporal punishment (section 10).

Section 7 of the Juvenile Ordinance, provides that if a question arises as to whether a person before it is a child for the purpose of the Ordinance the Juveline Court shall` record a finding after such enquiry which hall include a medical report for determination of the- age of the child. On perusal of the tile, it transpires that the 1st

Additional Sessions Judge referred the applicants to the Civil Surgeon, Civil Hospital. Sukkur for determination of their age. The Civil Surgeon after clinical dental and radiological examination of the applicants by letter, dated 2nd August. 2001 opined about their ages as follows:--

(i) Raja son of Ali Gohar Dharejo appears to be 17 to 18 years.

(ii) Naseer Ahmed son of Kadir Bux Dharejo appears to be 16 to 18 years.

It appears that the 3rd Additional Sessions Judge/Juvenile Court, Sukkur was satisfied with the Medical Report of the Civil Surgeon and bifurcated the case of the applicants for trial as Juveline Offenders. However, he declined to release the applicants on bail only for the reason that in the F.I.R. active role had been assigned to them in the commission of the heinous offences of murder punishable with death. The Court did not elaborate further.

The argument of the State Counsel that the age of the applicants should be taken to be 18 years, as it is an approximate figure, is not reasonable. As the Ordinance has to be interpreted liberally, a margin of error, if any, should be given to the accused. Further the offence was committed on 26-3-2002 while the medical examination was conducted on 26-7-2001 which was after four months of the incident. Therefore, according to the Medical certificate, on the date the offence was committed the age of Raja (applicant No. l) was 17 years to 17 years 8 months and that of Naseer was 16 years to 17 years 8 months respectively. Therefore., according to the Medical Certificate, giving the E3 benefit of estimation, neither of the two applicants-had attained the age of 18 years at the time of commission of the offence i.e. they were `children' according to the provisions of the Juvenile Justice System Ordinance, 2000. They are, therefore, entitled to the benefits stated in section 10 of the Juvenile Ordinance which includes the right to be released on bail or placed under custody of a Probation Officer. Additionally, in view of the Supreme Court judgment in the case of Siraj Din v. Saghiruddin 1970 SCMR 30, cited by the learned counsel, the applicants are entitled to be released on bail.

In view of the above discussion, the application for bail is granted and the applicants are ordered to be released on bail subject to their furnishing solvent surety in the sum of Rs.2,00,00.0 (rupees two lacs only) each and P.R. Bond in the like amount to the satisfaction of the trial Court.

The above are the reasons for the short order dated 26-4-2002 whereby the applicants were ordered to be released on bail.

H.B.T./A-346/K Bail granted .

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