

Kerala High Court
Kerala High Court
Rajeesh vs State Of Kerala on 26 September, 2008
IN THE HIGH COURT OF KERALA AT ERNAKULAM CrI.MC.No. 3624 of 2008()

1. RAJEESH

... Petitioner

Vs

1. STATE OF KERALA

... Respondent

For Petitioner :SRI.M.T.SURESHKUMAR

For Respondent : No Appearance

The Hon'ble MR. Justice R.BASANT

Dated :26/09/2008

O R D E R

R.BASANT, J

CrI.M.C. No.3624 of 2008

Dated this the 26th day of September, 2008 ORDER

Petitioner, who is said to be a 10th standard student, a juvenile in conflict with law, aged less than 18 years on the date of commission of the offence, has come to this Court complaining about the grossly erroneous and misdirected disposal of a bail application filed by him before the Principal Magistrate of the Juvenile Justice Board. The petitioner faces allegations in a crime registered under Section 302 I.P.C. His father is the co-accused. They are alleged to have caused the death of the deceased, aged about 19 years, by inflicting injuries on him. The petitioner is admittedly a juvenile. When his application was filed before the Principal Magistrate of the Juvenile Justice Board, the same was first rejected on 09.09.08. When the prayer was renewed, it was again dismissed by order dated 20.09.08. The petitioner, instead of approaching the Sessions Court or this Court for bail under Section 439 Cr.P.C, has come to this Court with a grievance that the Principal Magistrate has totally misdirected himself in law in considering the bail application. CrI.M.C. No.3624 of 2008 2

The Principal Magistrate has not at all applied his mind to Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2000 and this gross error/perversity and the consequent failure of justice must prompt this Court to invoke the jurisdiction under Section 482 Cr.P.C, it is prayed.

2. I find merit in that submission. Normally this Court may have directed the petitioner to approach the Bench dealing with applications for bail, but I find that the error is so gross and the consequent failure of justice is so

manifest that this Court would now be justified in invoking the jurisdiction under Section 482 Cr.P.C.

3. A detailed order has been passed on 09.09.08 by the learned Principal Magistrate. The latter order dated 20.09.08 refers to the earlier order and asserts that there are no change of circumstances.

4. The real grievance of the petitioner is that there has been no advertance to Section 12 of the Juvenile Justice Act. Any court, considering the application for bail by a juvenile in conflict with law, must primarily advert to Section 12 of the Juvenile Justice Act, which I extract below:

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"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 of 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 subsection (1) by the officer in charge 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 subsection (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 inquiry regarding him as may be specified in the order." The comparison and concern of a childly friendly socialist welfare State and the refined system of laws therein is reflected in Section 12 of the Act. Except in the interest of the juvenile, bail cannot at all be denied to him. It is unfortunate that this aspect was not even adverted to by the Principal Magistrate in the impugned orders. The rejection of the bail application of the Crl.M.C. No.3624 of 2008 4

juvenile on the basis of the opposition of the Police on the vague grounds of apprehension of tampering of evidence, disappearance of evidence is to say the least unsatisfactory and cause concern.

5. I am, in these circumstances, satisfied that the impugned orders deserve to be set aside and the petitioner deserves to be enlarged on bail.

6. In the result:

i) This Crl.M.C is allowed;

ii) The impugned orders are set aside; iii) The petitioner shall be released on bail on condition that he executes a bond for Rs.50,000/- (Rupees Fifty thousand only) with two sureties each for the like sum to the satisfaction of the learned Magistrate;

iv) He shall report before the District Probation Officer between 10 a.m and 12 noon on all Mondays for a period of 3 months and thereafter as and when directed in writing by him.

7. Hand over a copy of this order to the learned counsel for the petitioner today itself.

(R.BASANT, JUDGE)

rtr/-