

**IN THE COURT OF THE SESSIONS JUDGE, KHURDA AT
BHUBANESWAR.**

Present:

Dr. D.P. Choudhury,
Sessions Judge, Khurda
at Bhubaneswar.

Dated, Bhubaneswar the 17th Sept. '14.

Crl. Appeal No. 36 of 2014.

[Arising out of the Order dated 01.09.2014 passed by the learned Chief Judicial Magistrate-cum-Principal Magistrate, Juvenile Justice Board, Khurda in JGR No.97 of 2013, corresponding to Balipatna P.S. Case No.127, dated 16.09.2013.]

Lulu @ Subrat Pradhan, aged about 18 years, S/o. Saroj Pradhan of Vill. - Gotalagram, P.S. - Baliana, Dist. - Khurda.

... **Appellant.**

-V e r s u s-

State of Odisha.

... **Respondent.**

Counsel :

For Appellant -- Shri C.R. Dash & Associates.

For Respondent -- Shri B.B. Mohanty (P.P. in charge).

Date of argument & date of order : 17.09.2014.

O R D E R

This appeal is directed against the order dated 01.09.2014 passed by the learned Chief Judicial Magistrate-

cum-Principal Magistrate, Juvenile Justice Board, Khurda (hereinafter called “Principal Magistrate”) in JGR No.97 of 2013, arising out of Balipatna P.S. Case No.127, dated 16.09.2013, rejecting the prayer for bail to the appellant, who is a juvenile in conflict with law.

2. Back-drop of the prosecution case is that the appellant had kept sexual relationship with informant’s daughter six months prior to 16.09.2013 and secretly took video clippings of her photographs. He transmitted the same to various persons with an intention to blackmail her and also demoralized her in public esteem. After registration of the case, police took up investigation, apprehended the appellant and produced him before the learned Principal Magistrate, who sent him to Observation Home, pending inquiry. Successive bail petitions filed under section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (“the Act”, for short) were rejected by the learned Principal Magistrate and this Court also. But, interim bail was granted by this Court so as to enable the appellant to appear at Plus Two Examination. After examination was over, he surrendered and now is in Observation Home.

3. After returning to Observation Home, on 06.08.2014 the appellant again filed a petition praying to

release him on bail. Considering the said petition, the learned Principal Magistrate rejected his prayer for bail vide the impugned order dated 01.09.2014 on the ground that in the event the appellant is enlarged on bail, he may be influenced by his antisocial friends. Again such rejection order, this appeal has been filed on various grounds. Hence the appeal.

4. Learned counsel appearing for the appellant submitted that the conduct of the appellant may be taken into consideration while he was on interim bail. Moreover, during interim bail, he underwent medical checkup, as his health condition was found deteriorated. In spite of his health problem, the appellant surrendered on 16.04.2014. It was submitted that the decision of the learned Principal Magistrate rejecting the prayer for bail is contrary to law. The learned Principal Magistrate has erred in law by not allowing bail to the appellant, as bail is the rule and rejection is the exception in the case of a juvenile in conflict with law. Learned counsel for the appellant further submitted that the learned Principal Magistrate should have taken into consideration the undertaking furnished by the parents of the appellant to protect him from being mixed with any veteran criminals. According to him, the learned Principal Magistrate has further committed a great error by not going through the materials on

record to the extent that memory chip has been destroyed by the aunt of the victim girl, whereas the same has been shown by the police to have been seized. Learned counsel for the appellant further submitted that the appellant has already stayed at Observation Home for one year and inquiry is still not completed, for which it is a fit case where the appellant should be allowed to go on bail. Accordingly, he submitted to set aside the impugned order of the learned Principal Magistrate and admit the appellant to bail.

5. Learned Public Prosecutor in charge opposed the bail, submitting that this Court has already considered the bail petitions of the appellant on earlier occasions and has been pleased to reject the same. So, the successive bail petition filed by the appellant is not maintainable. He further submitted that the allegations are very serious in nature and the inquiry is likely to be closed within two months. Accordingly, he prayed to dismiss the appeal by disallowing the prayer for bail.

6. I have gone through the LCR, bail petition and other materials on record. As already stated, this appeal arises out of the order dated 01.09.2014 of the learned Principal Magistrate. Section 52 of the Act empowers the Court of Session to hear appeal against any order passed under the provisions of the said Act. Since the impugned order has been

passed by the learned Principal Magistrate under section 12, this appeal has been filed under section 52 of the Act.

7. On going through the FIR, it appears that while the victim girl was studying in Class-IX, the appellant forcibly kept sexual relationship with her and recorded such relationship through his mobile camera. Thereafter, he started blackmailing her. The appellant sent the mobile photographs to his friends. When it came to the knowledge of the parents of the victim girl, she narrated all the incidents before them. Her relatives in their statements recorded under section 161 of the Cr. P.C. have corroborated the FIR story. The statement of the victim girl recorded under section 164 of the Cr. P.C. shows that at first the appellant showed the naked photographs of her mother, aunt and grand-mother and threatened her to send the same in the internet and, as such, he kept physical relationship with her. By showing her photographs, the appellant also blackmailed the victim girl. He kept sexual relationship with her for six months and after recording their such relationship left the same in the internet. She did not disclose her ordeal to anybody out of fear. But, the memory chip was received by her mother, which was broken by her aunt. At the same time, seizure list shows that the memory chip has been seized. Be that as it may, it appears from the

whole episode that there was relationship between the victim girl and the appellant. But, it is not known as to how the parents of the victim could not rise from their deep slumber and only took action in a belated stage. It is not known why the victim did not disclose the matter to her parents. No doubt, there is a prima facie case against the appellant. The inquiry has already commenced, but the same could not be completed in spite of the mandate of four months from the date of inquiry.

8. Further, on going through the record, it is found that bail petitions of the appellant have been rejected by the learned Principal Magistrate on three occasions and on all such occasions the same have also been confirmed in appeals. On earlier occasion, while disposing of the appeal, direction was given to the learned Principal Magistrate to conclude the inquiry as early as possible; but the same has not been complied with. Moreover, the interim bail was granted to the appellant for appearing at his examination and obeying the order of this Court, he has already surrendered.

9. It is only available from the impugned order of the learned Principal Magistrate that there is apprehension that the appellant may be influenced by his antisocial friends in case he is released on bail. Such apprehension of the learned

Principal Magistrate should have been supported by some materials supplied by prosecution, as apprehension cannot be based on speculation. The parents of the appellant have now filed an affidavit to take care of their son in the event he is released on bail.

10. Consideration of bail of a juvenile in conflict with law is based on the philosophy as applicable under juvenile justice, but not under criminal justice. As a matter of fact, bail in such case is the rule and rejection is the exception. It can only be rejected on the grounds i.e. 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. So, the seriousness of the allegation is not the criteria. Here, ends of justice has to be considered when there is any fact established or brought to the knowledge of the Juvenile Justice Board to show that there is reasonable apprehension of mixing with antisocial elements in the event the appellant is released on bail. The ends of justice, as per the provisions of the Act, is to see the welfare of the juvenile in conflict with law vis-a-vis the interest of the victim. In this case, the main chip has already been seized and inquiry has already started. The appellant has already appeared in the

examination, which shows that his further detention in jail will jeopardize his career prospective. The medical certificate produced by him showing his health condition is also equally important. At the same time, the interest of the victim girl must be protected, as she is almost in the same age group as that of the appellant. The medical report of the victim girl does not disclose about any recent sexual intercourse with her. In such circumstances, in my considered view, the release of the appellant will not defeat the ends of justice. Although on earlier occasions this matter has been disposed of, but in view of the changed circumstances, as discussed above, allowing the appeal by granting bail to the appellant will not amount to review of the earlier order with regard to the prayer for bail. Be that as it may, the ground on which the appellant has been denied bail by the learned Principal Magistrate is not agreed with. Hence ordered :

O R D E R

The appeal is allowed on contest without cost. The order dated 01.09.2014 passed by the learned Chief Judicial Magistrate-cum-Principal Magistrate, Juvenile Justice Board, Khurda in JGR No.97 of 2013, arising out of Balipatna P.S. Case No.127, dated 16.09.2013, is hereby set aside.

Let the appellant be released on bail of

Rs.25,000/- (Rupees Twentyfive Thousand) with two sureties each for the like amount to the satisfaction of the learned Principal Magistrate on the following conditions :

- (i) That, he will prosecute study and report compliance to the learned Principal Magistrate regularly;
- (ii) he will not tamper with prosecution witnesses in any manner, either directly or indirectly;
- (iii) the parents of the appellant will furnish a fresh undertaking to take the care of their son and look after his well-being so that he can lead a healthy and disciplined life;
- (iv) he will appear in person before the Juvenile Justice Board, Khurda on every date till conclusion of inquiry; &
- (v) he will not commit any offence while on bail.

**Sessions Judge, Khurda
at Bhubaneswar.**

17.09.2014.

Dictated, corrected by me and pronounced in the open Court this day the 17th September, 2014.

**Sessions Judge, Khurda
at Bhubaneswar.**

17.09.2014.

