

IN THE COURT OF SESSIONS JUDGE, SONITPUR AT TEZPUR

Criminal Appeal NO. :- **4(S-2)2015**

Present :- **Mridul Kumar Kalita, AJS**
Sessions Judge, Sonitpur
Tezpur.

Appellant :- **Akan Basumatary**
S/o Sri Kamal Basumatary
Vill – NO. II Sudemjuli,
PO – Batasipur,
PS - Dhekiajuli,
Dist. Sonitpur (Assam). For
Juvenile Sri Birangchar
Basumatary @ Jalo Basumtary.

-vs-

:- State of Assam, represented by
Public Prosecutor, Sonitpur,
Tezpur.

Counsel for the Appellant : Bijay Kumar Basumatary,
Advocate

Counsel for the Respondent : Sri Hari Prasad Sedai, PP

Date of hearing : 30-04-2005

Date of Judgment : 02-05-2015.

JUDGMENT

1. Being highly aggrieved with the order, dated 17-04-2015, passed by learned Sub-Divisional Judicial Magistrate, Tezpur as Principal Magistrate of the Juvenile Justice Board, Sonitpur, in connection with Dhekiajuli PS Case NO. 191/15 corresponding to GR Case No. 757/15 (u/s 120(b)/121/122 of IPC read with Section 25(1-A) Arms Act, read with section 4/5 Explosive Substance Act, r/w Section 10/13 ULA(P) Act, rejecting the bail of juvenile in conflict with law Sri Birangchar Basumatary @ Jalo Basumtary, the petitioner Sri Akan Basumatary, who is the father of the juvenile in conflict with law, has filed this Criminal Appeal. Learned counsel

for the petitioner had filed this appeal u/s 53 of Juvenile Justice (Care and Protection of Children) Act 2000, however, Section 53 deals with revision and not appeals and, therefore, this petition is deemed to be a petition U/s 52 of the Juvenile Justice (Care and Protection of Children) Act 2000, which deals with Appeal.

2. Before entering into the merit of the appeal, let me briefly, state the facts relevant for consideration of this appeal.

a) On 10-04-2015 an FIR was lodged before the Officer-in-Charge of Dhekiajuli Police Station by one Major Aditya, of 36 Assam Rifles, C/O 99 APO, inter-alia, alleging that Birangchar Basumatary @ Jalo Basumatary, aged about 17 years was found possessing one grenade, some ammunitions, detonators and mobile phone and same were recovered from him. It was also alleged in the FIR that Birangchar Basumatary @ Jalo Basumatary is an active cadre of NDFB(S). Thereafter, the juvenile in conflict with law was arrested on the same day and produced before the Juvenile Justice Board, Sonitpur.

b) A bail petition was filed on 17-04-2015 before the Principal Magistrate of Juvenile Justice Board, Sonitpur, however, same was rejected vide order dated 17-04-2015 and this order of rejection is impugned, in this appeal before this Court.

3. The petitioner challenged the impugned order on following grounds:

i) That the SDJM(S), Sonitpur, passed the order dated 17-04-2015, mechanically, by simply using the words mentioned in section 12 of the Juvenile Justice (Care and Protection of Children) Act 2000.

ii) That the SDJM(S), Sonitpur, passed the order dated 17-04-2015 merely on assumption that the juvenile will mingle with unknown criminals, without having any knowledge about back ground of the juvenile in conflict with law.

iii) That the SDJM(S), Sonitpur passed the aforesaid order without considering the antecedents of the juvenile in conflict with law.

iv) That the order passed on 17-04-2015 is illegal, unlawful, imprudent and perverse.

4. This case has been registered as an appeal u/s 52 of Juvenile Justice (Care and Protection of Children) Act 2000 and the case record of GR Case No. 757/15 was also called for from the Juvenile Justice Board, Sonitpur.
5. I have perused all the materials available in the case records and heard learned counsel for both parties at length.
6. For the sake of convenience, the order dated 17-04-2015 which was passed by learned Principal Magistrate, Juvenile Justice Board, Sonitpur, is quoted herein below:

" 17-04-2015 Seen the petition (No. 193/15) filed for the bail of juvenile Birangchar Basumatary.

Perused the C.R and heard both sides. It appears from the C.R that juvenile was arrested on 10-04-15 as a linkman of NDFB(S) and grenade, detonator etc. were recovered from him and this case is registered u/s 120 B/121/122 of IPC read with Section 25(1-A) of Arms Act, read with section 4/5 ES Act and Section 10/13 of UA(P) Act.

Therefore, it appears to me that if juvenile will be released at this stage, there may be chance of likely to bring him into association of other criminals or expose him to moral, physical or psychological danger.

Therefore, after considering the aforesaid circumstances and considering the gravity of the offences, the prayer for the bail of juvenile is rejected at this stage."

7. Learned counsel for the appellant relying on the following Judgments passed by respective High Courts has argued that Section 12 of Juvenile Justice (Care and Protection of Children) Act, 2000 provides that – the juvenile in conflict with law shall be released on bail, irrespective of the nature of offence but he shall not be so released if there appears reasonable ground for believing that the release is likely to bring him into association with any known criminal, or expose him to moral, physical and psychological danger or that his release would defeat the ends of justice.

(a) Mukesh Kumar Parit Vs. State of Bihar (reported in [http : // Indiakanon.Org/doc/180246096](http://Indiakanon.Org/doc/180246096)) of Patna High Court.

(b) Lukesh Kumar @ Lokesh Jadav State of Bihar (reported in [http : // Indiakanon.Org/doc/149014665](http://Indiakanon.Org/doc/149014665)) of Patna High Court.

(c) Sashi Kumar Saini Vs. State of Delhi (reported in [http : // Indiakanon.Org/doc/1458780](http://Indiakanon.Org/doc/1458780)) of Delhi High Court.

(d) Rahul Misra Vs. State of M.P. (reported in [http : // Indiakanon.Org/doc/475417](http://Indiakanon.Org/doc/475417)) of M.P. High Court.

Learned counsel for the juvenile in conflict with law has also argued that the Juvenile Justice Board must come to the conclusion that the case falls within exception on some basis like social investigation report, report of any NGO, report of Probation officer etc. Learned counsel has also argued that the Board should also take into consideration of the antecedent of the Juvenile in conflict with law before rejecting any bail under Section 12 of Juvenile Justice (Care and Protection of Children) Act, 2000.

7. I have also heard learned Public Prosecutor, who has also submitted that the order of the Principal Magistrate must be based on materials. I have also perused all the rulings cited by the learned counsel for the Juvenile in conflict with law.

8. On perusal of the impugned order, it appears that learned Principal Magistrate has arrived at the conclusion that, in the instant case, there may be chance of likely to bring the juvenile in conflict with law, into association of other criminals or expose him to moral, physical or psychological danger only on the basis of gravity of offence. Nothing is reflected in the impugned order regarding any other basis on which such conclusion has been arrived at. It is

apparent that Section 12 of Juvenile Justice (Care and Protection of Children) Act, 2000 emphasises release of juvenile, irrespective of the gravity of offence. The only exception under which a juvenile would not be released are as provided in the last portion of Section 12 (1) i.e. if there appears reasonable ground for believing that the release is likely to bring him into association with any known criminal, or expose him to moral, physical and psychological danger or that his release would defeat the ends of justice. There must be some basis, irrespective of the gravity of offence, on which the Juvenile Justice Board may arrive at a conclusion that the case is a fit case for rejection of bail. The basis may be a social investigation report, a report of probation Officer, a report of any NGO etc. The finding cannot be arrived at on a subjective basis. In the instant case no such basis has been shown by learned Principal Magistrate. His satisfaction has to be on objective basis and not purely subjective one. I am, therefore, of the considered opinion that the order dated 17-04-2015 passed by learned Principal Magistrate, Juvenile Justice Board, Sonitpur has to be interfered with, in exercise of Appellate jurisdiction of this Court. I, therefore, set aside the order dated 17-04-2015 passed in GR Case No. 757/15 by learned Principal Magistrate, Juvenile Justice Board, Sonitpur and direct to reconsider the prayer for bail of the juvenile in conflict with law on the basis of some report, which the Juvenile Justice Board may call for, in its discretion, from any appropriate person/authority which it may deem fit and proper.

9. Accordingly, this Criminal Appeal is disposed of.

10. Send back the case record of GR Case No. 757/15 to the Juvenile Justice Board, Sonitpur.

Given under my hand and seal of this Court on this day, the 2nd May of 2015.

(M.K. Kalita)
Sessions Judge,
Sonitpur, Tezpur.

Dictated and corrected by me.

(M.K. Kalita)
Sessions Judge
Sonitpur, Tezpur.

Typed by me.

(R. Hazairka),
steno.