

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CRR-3340-2014

Date of decision : 18.05.2015.

Talwinder Singh alias Kindoo

..... Petitioner

Versus

State of Punjab

... Respondent

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

1. Whether Reporters of the local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. Anil Kumar Garg, Advocate for applicant-petitioner.

Mr. Jashanpreet Singh, AAG, Punjab.

DARSHAN SINGH, J.

The present revision under Section 53 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (here-in-after called 'the Act') has been filed by petitioner Talwinder Singh alias Kindoo, having been declined the concession of bail by the learned Principal Magistrate, Juvenile Justice Board, Rupnagar vide order dated 12.09.2014 and the dismissal of his appeal filed under Section 52 of the Act by the learned Sessions Judge, Rupnagar vide order dated 07.10.2014.

Petitioner Talwinder Singh alias Kindoo, a juvenile in conflict with law, has been booked under Section 377, 342, 148, 506 and

120-B of the Indian Penal Code, 1860 and under Section 4 of the Protection of Children from Sexual Offences Act, 2012 for committing unnatural sex with the victim along with his co-accused.

Learned counsel for the petitioner contended that this fact is not disputed that the petitioner is a juvenile in conflict with law. As per Section 12 of the Act, he was entitled for grant of bail. The courts below have not discussed any of the three contingencies specified under Section 12 of the Act to decline the bail. So, the orders passed by the courts below suffer from legal infirmity. He further contended that the medical evidence does not support the prosecution allegations. He contended that the petitioner is in custody since 28.8.2014 i.e. for the last more than 8 ½ months. The conclusion of the trial will take time. So, the petitioner is entitled for grant of bail.

On the other hand learned State counsel pleaded that the main role in this occurrence has been played by the petitioner. So, he does not deserve the concession of bail.

I have duly considered the aforesaid contentions. The petitioner being juvenile in conflict with law the grant of bail to him is governed by Section 12 of the Act, which reads as under:

“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 1[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 sub-section (1) by the officer incharge 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 sub-section (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.”

In view of the aforesaid provision of law, a juvenile can be denied the concession of bail if any of the three contingencies specified under Section 12 (1) of the Act is available in any case depending on the facts. These three situations are as under:-

- (i) if there appear reasonable grounds for believing that the release of the juvenile is likely to bring him into association with any known criminal;
- (ii) the release will expose the juvenile to moral, physical as psychological danger and'
- (iii) his release would defeat the ends of justice.

The gravity of the offence is not one of the grounds provided

under Section 12 of the Act for rejection of the application for bail moved a juvenile in conflict with law. The bail can be declined to a juvenile in conflict with law, on reasonable grounds for believing, that any of the three contingencies mentioned above as a matter of fact was available in a given fact situation.

In the instant case, in the order passed by the Principal Magistrate Juvenile Justice Board, he has been declined bail on the ground that he may try to tamper with the evidence and may also attempt to win over the prosecution witness which would certainly defeats the ends of justice. But there is no reference to any material available on record to draw such presumption by the learned Principal Magistrate Juvenile Justice Board, Rupnagar. There was no material available on record to show that the victim was under any threat or intimidation.

The learned Sessions Judge has dismissed the appeal on the grounds that serious allegations have been levelled in the statement of the victim recorded under Section 164 Cr.P.C. The victim is also a minor. The investigation of the case is still in progress and keeping in view the gravity of the offence and the manner in which it has been committed, there was no merit in the regular bail application filed by the petitioner. Learned Sessions Judge has not touched at all any of the three contingencies as provided under Section 12(1) of the Act in order to dismiss the appeal of the petitioner.

Thus, the impugned orders passed by the Courts below are totally against the spirit of Section 12 of the Act. The learned State counsel could not point out any material available on record to show that

there are reasonable grounds for believing that the petitioner is likely to bring him into association with any known criminal if released on bail or that the release will expose him to moral, physical or psychological danger or that his release would defeat the ends of justice in any manner.

Moreover the petitioner is in custody for the last more than 8½ months. The conclusion of the trial will certainly take time and the detention of the petitioner will not serve any purpose in any manner.

In view of the totality of the facts and circumstances of the case discussed above, there is no escape from the conclusion that the impugned orders passed by the learned courts below do not satisfy the condition/contingencies provided under Section 12(1) of the Act to decline the concession of bail to the petitioner. Thus, the impugned orders are not sustainable in the eye of law and are liable to be set aside.

Consequently the present revision petition is hereby accepted. The impugned orders i.e. order dated 12.9.2014 passed by the learned Principal Magistrate, Juvenile Justice Board, Rupnagar and order dated 7.10.2014, passed by the learned Sessions Judge, Rupnagar, are hereby set aside. The petitioner is directed to be released on bail subject to his furnishing adequate bail bond/surety bonds by his natural guardian or near relative to the satisfaction of the learned Principal Magistrate, Juvenile Justice Board, Rupnagar.

18.05.2015
sunil yadav

(DARSHAN SINGH)
JUDGE