

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Revision No. 3786 of 2014.
Date of Decision : 07.04.2015.

Golu @ Ashish

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present: Mr. Saurabh Dalal, Advocate for the petitioner.

Mr. Satish Saini, Deputy Advocate General, Haryana.

Tejinder Singh Dhindsa, J. (Oral)

A bail application preferred by the present petitioner was dismissed vide order dated 04.10.2014 by the Principal Magistrate, Juvenile Justice Board, Rohtak. The appeal preferred by the petitioner against such order has also been dismissed vide order dated 17.10.2014 passed by the learned Sessions Judge, Rohtak.

It is towards impugning the order dated 04.10.2014 passed by the Principal Magistrate, Juvenile Justice Board, Rohtak as also order dated 17.10.2014 passed by the learned Sessions Judge, Rohtak that the instant revision petition has been filed before this Court.

Learned counsel for the parties have been heard at length.

The factual position as regards the present petitioner being a juvenile is not in dispute.

As per prosecution version, the complainant, namely, Om Parkash was running a jewellery shop in the name of 'Gupta Jewellers' and the alleged occurrence took place on 07.02.2012 when three young boys with muffled faces were stated to have entered the shop

and at the point of pistol, robbed the complainant of ₹5 lacs and gold ornaments which were lying in the chest. During the process of investigation, the boys, who had committed the alleged robbery, were identified and one of them was identified as the present petitioner. Furthermore, from the possession of the present petitioner/juvenile, two gold rings were stated to have been recovered.

The petitioner was arrested on 22.08.2014.

The bail application preferred by the petitioner has been dismissed by the Principal Magistrate, Juvenile Justice Board, Rohtak by merely observing that if the petitioner is released on bail, there is every likelihood of him to come in association with other criminals as well as would expose him to moral, physical or psychological danger.

Even the appeal preferred by the petitioner has been dismissed by the learned Sessions Judge, Rohtak by merely noticing that at the time of commission of the alleged offence, he was in association with four other criminals.

Upon consideration of the matter, I am of the view that the present revision petition deserves to succeed.

Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (in short 'the Act') 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 [or placed under the supervision of a Probation Officer or under the care of any fit institution or 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."

A bare reading of the provision reproduced here-in-above, would make it apparent that an exception has been carved out for declining the bail to the juvenile who is in conflict with law i.e. he or she is likely to come in association with any known criminal or upon release on bail would expose such juvenile to moral, physical or psychological danger or that release of the juvenile would defeat the ends of justice. For invoking such exception, there has to be some material before the competent authority on the basis of which, it can be held that the release of the juvenile in the present case would fall within the exception recognized under Section 12 of the Act. The impugned order dated 17.10.2014 passed by the learned Sessions Judge, Rohtak is completely bereft of any such reasoning. No such material/evidence has been adverted to in the impugned order. On the contrary, the learned Sessions Judge, Rohtak has merely reproduced the language of the statutory provision and the exception carved out under Section 12 of the Act which in itself would not be sufficient.

Merely on the allegation that at the time of commission of the alleged offence, the petitioner/juvenile herein was in association

with four other criminals would not be a valid ground to deny to him the concession of bail in the light of Section 12 of the Act.

At this stage, it would be useful to refer to a judgment passed by a coordinate bench of this Court in **Atul Kumar and another Vs. State of Haryana, 2003(4) RCR (Criminal) 404**, wherein Section 12 of the Act has been considered. Even in the facts in Atul Kumar's case (supra), the offence attributed to the juvenile was serious and Sections 302/323/147 and 149 IPC had been cited and the coordinate bench held in the following terms :

"I am further of the view that there has to be some evidence on record showing that after the release on bail, the petitioners are likely to come in association with any known criminal or their release on bail would expose them to moral, physical or psychological danger or that their release would defeat the ends of justice. In a given case if the parents of the petitioners are also criminals either ex-convicts or members of a gang, it may be possible for the Court to refuse bail. Another example could be whether the petitioners have repeated the crime showing lapse on the part of the parents after their release while on bail, then the case may be covered by the exceptions carved out under Section 12 of the Act. However, in a case like the one in hand, where no material has been placed on record to show that the release of the 'juvenile in conflict with law' would defeat the ends of justice or any other exception, the petitioners cannot be denied the benefit of bail merely on the basis of conjectures or opinion formed by the prosecution or the Court. Reliance in this regard could be placed on the judgments in the case of Sahabuddin @ Shabboo's case (supra) and Sanjeev Kumar's case (supra)."

For the reasons recorded above, the present revision petition is allowed. The impugned orders of both the Courts below are set-aside. The petitioner is held entitled to the benefit of bail under Section 12 of the Act.

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Accordingly, it is directed that the petitioner be released on bail subject to furnishing bail bonds to the satisfaction of Chief Judicial Magistrate, Rohtak.

Petition allowed in the aforesaid terms.

April 07, 2015.
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(TEJINDER SINGH DHINDSA)
JUDGE