

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

Cr.R.No.3807 of 2014 (O&M)
DATE OF DECISION : 31.3.2015

Vikas and another

PETITIONERS

VERSUS

State of Haryana

RESPONDENT

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER

1. Whether reporters of Local Newspapers 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:- Shri A.S.Tewatia, Advocate for the petitioners.

Shri Pawan Girdhar, Additional A.G. Haryana.

Shri N.S.Shekhawat, Advocate.

MAHESH GROVER, J.

The petitioners question the order dated 6.10.2014 by which their prayer for bail was declined by the Principal Magistrate, Juvenile Justice Board, Gurgaon by observing that there is likelihood of the petitioners coming in association with bad elements.

Such considerations even though mandated by the provisions of the

Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as the Act) necessarily have to be established by giving cogent reasons upon material suggestive of such apprehensions.

In the reply filed by the respondents, it has been stated on affidavit by Shri Shareef Singh, Assistant Commissioner of Police, Pataudi as follows :-

“II. It has also come forth that the petitioners have link with hard core criminal Raju @ Chilka s/o Subhash Chand r/o Ward No.8 Vill. Jatauli, Pataudi against whom, the following FIRs are registered :-

- (i) FIR No.206 dated 6.11.2001 u/s 457/380 IPC P.S.Pataudi.
- (ii) FIR No.14 dated 27.1.2002 u/s 457/380 IPC P.S.Pataudi.
- (iii) FIR No.16 dated 27.1.2002 u/s 457/380 IPC P.S.Pataudi.
- (iv) FIR No.40 dated 27.3.2004 u/s 457/380 IPC P.S.Pataudi.
- (v) FIR No.14 dated 8.2.2005 u/s 379 IPC P.S.Palhawas Rohdai, Dist.Rewari.
- (vi) FIR No.16 dated 24.1.2005 u/s 356/382 IPC P.S. Sector-5.
- (vii) FIR No.17 dated 24.1.2005 u/s 379 IPC P.S.Pataudi.
- (viii) FIR No.71 dated 7.3.2005 u/s 394/302/34 IPC P.S.Bilaspur.
- (ix) FIR No.452 dated 21.10.2008 u/s 379 IPC P.S.Sadar, Gurgaon.
- (x) FIR No.134 dated 24.7.2012 u/s 307/34 IPC

P.S.Pataudi.

- (xi) FIR No.135 dated 24.7.2012 u/s 382/506 IPC and 25/54/59 Arms Act P.S.Pataudi.
- (xii) FIR No.166 dated 29.8.2012 u/s 307/34 IPC and 25/54/59 Arms Act P.S.Pataudi.
- (xiii) FIR No.167 dated 29.8.2012 u/s 285 IPC 25/54/59 Arms Act P.S.Pataudi.
- (xiv) FIR No.185 dated 16.9.2012 u/s 285 IPC 25/54/59 Arms Act P.S.Pataudi.
- (xv) FIR No.135 dated 3.10.2012 u/s 398/401/379/411/476 IPC 25/54/59 Arms Act P.S. Sector 55/56.
- (xvi) FIR No.55 dated 17.2.2014 u/s 302/120-B IPC 25/54/59 Arms Act P.S.Pataudi. The said hard core criminal is in Bhondsi Jail as he was atleast arrested in the present FIR.

III. It has also come forth that the petitioners have left their studies and in case they are released on bail there is every possibility that they may further join the company of bad elements of Village Jatauli as well as other villages.

IV. That the release of the petitioners on bail would defeat the objectives of Juvenile Justice Act and it would not be good for the physical or psychological health of the juvenile petitioners.”

This material, however, was never put forward before the Principal Magistrate, Juvenile Justice Board at the time when the prayer for bail was

opposed by the State. It would be a moot question as to whether such material now being brought to the notice of the Court would have any significance if the Principal Magistrate, Juvenile Justice Board was deprived of the same in the first instance.

The provisions of Section 12 of the Act are extracted here below :-

“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, 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.”

Thus, any prayer for bail which is declined on an apprehension of a juvenile repeating the act or being exposed to moral, physical or psychological danger, would have to be formed on the basis of well founded material available with the Principal Magistrate, Juvenile Justice Board to enable it to ponder over the issue and conclude by giving reasons which may withstand the judicial scrutiny apart from showing sufficient sustainability of such an apprehension.

The Principal Magistrate, Juvenile Justice Board cannot merely pay lip service by cursorily accepting the plea of the prosecution for declining the release of the juvenile on the ground that it is likely to endanger him morally, physically or psychologically.

This Court has already expressed in detail some aspects of the instant issue in **Shimil Kumar v. State of Haryana** 2013(4) R.C.R.(Criminal) 16. But a perusal of the impugned order would reveal that what to talk of the observations of this Court, the Principal Magistrate, Juvenile Justice Board has not even taken sufficient care to directly adhere to the language of the statute itself.

Consequently, while accepting the petition in part, the impugned order is set aside and the matter is remitted back before the Principal Magistrate, Juvenile Justice Board for a decision afresh keeping in view the aforesaid observations. The needful be done as expeditiously as possible, preferably within a period of two months from the date of receipt of a copy of this order after giving due opportunity to both the sides.

Disposed of.

March 31, 2015
GD

(MAHESH GROVER)
JUDGE