

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

Crl. Rev. No.5030 of 2015 (O&M)

Date of Decision: 02.03.2016

Gaurav

....Petitioner

Versus

State of Haryana

....Respondent

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspapers may be allowed to see the judgment ? (Yes/No)**
- 2. To be referred to reporters or not ? (Yes/No)**
- 3. Whether the judgment should be reported in the Digest ? (Yes/No)**

Present:- Mr. Sarfraj Hussain, Advocate
for the petitioner.

Ms. Tanushree Gupta, D.A.G., Haryana
for the respondent-State.

DAYA CHAUDHARY, J.

Crl. Misc. No.42158 of 2015

Allowed as prayed for.

Crl. Rev. No.5030 of 2015

The present revision petition has been filed to challenge the impugned order dated 18.11.2015 passed by the Juvenile Justice Board, Gurgaon, whereby, the bail to the present petitioner, who has already been declared juvenile, has been declined and the same has been affirmed by Additional Sessions Judge, Gurgaon vide judgment dated 10.12.2015. The petitioner, being juvenile, has prayed for setting aside the impugned orders passed by both the Courts below.

The case of the petitioner is that he was arrested in FIR No.700 dated 31.07.2015 registered under Section 6 of the POCSO Act at Police Station Sadar, Gurgaon. He moved an application for grant of bail before Juvenile Justice Board being Juvenile but the same was dismissed. The appeal preferred by him before the Additional Sessions Judge, Gurgaon was also dismissed.

Learned counsel for the petitioner submits that the bail application of the petitioner has been dismissed by both the Courts below only on the ground of presumption that in case, the juvenile is released on bail, he may influence the witnesses of the prosecution or he may indulge in some criminal activities, whereas, no such finding was recorded as to how he will come in contact with criminals and how he will be exposed to moral, physical or psychological danger, which would defeat the ends of justice. Learned counsel also submits that the petitioner was a regular student of 9th standard and is not a previous convict and he is not associated in any kind of un-social or criminal activities. Nothing has been brought on record to show that the petitioner is having any criminal background or any criminal case has been registered against any of his family member.

Learned counsel for the petitioner has also relied upon the judgment of this Court in case ***Bittu vs. State of Haryana 2015(2) RCR (Criminal) 316*** as well as judgment of Allahabad High Court in case ***Shiv Pujan vs State of U.P. & another 2011(6) RCR (Criminal) 816*** in support of his arguments.

Learned counsel for the respondent-State opposes grant of bail to the petitioner on the ground of seriousness of offence and also

because of the fact that the victim was minor at the time of occurrence.

Heard the arguments of learned counsel for the parties and have also perused the impugned orders as well as the allegations levelled in the FIR.

Admittedly, as per allegations levelled in the complaint, the FIR, in question, was registered against the petitioner. The petitioner was tried by Juvenile Justice Board, where, he moved an application for grant of bail, being juvenile, which was dismissed. Thereafter, an appeal filed against the said order before the Additional Sessions Judge, Gurgaon was also dismissed. The petitioner has been declined bail on the ground that in case, he is released on bail, his release would defeat the ends of justice which would bring him in association with non criminals and expose him to moral, physical and psychological danger.

Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (here-in-after referred to as 'Act') is relevant in the present controversy, which is reproduced 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.”

From the bare reading of the provisions of Section 12 of the Act, it appears that the intention of the legislature is to grant bail to the juvenile irrespective of the nature or gravity of the offence, alleged to have been committed by him and the same can be declined only in case where reasonable grounds are there for believing that the release is likely to bring him into the association of any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice.

Meaning thereby, as per aforesaid provision, 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.

Vide order dated 18.11.2015 passed by the Principal Magistrate, Juvenile Justice Board, Gurgaon, the bail application of the petitioner has been declined on the ground that he may come in contact of known criminals but no material was available on record to show as to how he would come in contact of known criminals.

Similarly, the appeal filed against the said order has also been dismissed on the ground that release of the petitioner would bring him in association with the known criminals or expose him to moral, physical or

psychological danger.

In the present case, while declining the bail application, the relevant provision has not been considered by both the Courts below as in accordance with Section 12 of the Act, the juvenile is entitled to bail as a matter of right unless the case falls in the exceptions carved out in the provision itself but nothing was available on record to show that any of the three exceptions specified under Section 12(1) of the Act was existing.

Similar view was observed in cases ***Manoj Singh vs State of Rajasthan 2004(2) RCC 995, Lal Chand v.State of Rajasthan 2006(1) RCC 167, Prakash v. State of Rajasthan 2006(2) RCR (Criminal) 530*** and ***Udaibhan Singh alias Bablu Singh v. State of Rajasthan 2005(4) Crimes 649.***

Learned counsel for the respondent-State has also not pointed out any material available on record to show that there are reasonable grounds for believing that the petitioner is likely to come into the association of any known criminal if released on bail or his release will expose him to moral, physical or psychological danger. Petitioner is in custody since 31.07.2015 and no purpose will be served, in case, he is kept in custody.

In view of the totality of the facts and circumstances of the case and law position as discussed above, both the Courts below have not satisfied the requirement of provisions of Section 12(1) of the Act and without having any material on record, the bail application of the petitioner has been declined. The impugned orders are not sustainable in the eye of law and as such, are liable to be set aside.

Accordingly, the present revision petition is allowed and the impugned orders i.e order dated 18.11.2015 passed by the Principal Magistrate, Juvenile Justice Board, Gurgaon and order dated 10.12.2015

passed by the Additional Sessions Judge, Gurgaon are hereby set aside.

The petitioner is directed to be released on bail subject to his furnishing adequate bail bond/surety bonds through his natural guardian or near relative to the satisfaction of the Principal Magistrate, Juvenile Justice Board, Gurgaon.

02.03.2016
gurpreet

(DAYA CHAUDHARY)
JUDGE