

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

**Criminal Revision No. 4354 of 2016
Date of decision: 14.12.2016**

Jabbar

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Johan Kumar, Advocate
for the petitioner.

Mr. Sharad Kumar Yadav, DAG, Haryana.

JAISHREE THAKUR, J. (Oral)

The instant revision petition has been filed seeking grant of bail in FIR No. 50 dated 16.02.2016, registered under Sections 366, 376 and 120-B of the Indian Penal Code at Police Station Hathin.

Counsel for the petitioner contends that the order dated 14.10.2016 passed by learned Additional Sessions Judge, Palwal and the order dated 21.09.2016 passed by the Juvenile Justice Board, Palwal declining the grant of regular bail are illegal and liable to be set aside.

In brief, the facts of the case are that the complainant namely Ramjan son of Yamala, resident of Village Panchanka, Tehsil Hathin, District Palwal complained that his niece was missing since 10.02.2016. Thereafter, the young girl was recovered and she made statement under Section 161 Cr.P.C. alleging that she had been abducted by three persons namely Wahid, Rahis and Jabbar-petitioner herein and taken to Delhi where the offence of rape was committed upon her. After investigation, a report under Section 173 Cr.P.C.

was submitted to the Court with regard to offences punishable under Sections 366, 376 and 120-B of the IPC. The petitioner herein moved an application that he should be treated and declared juvenile on the basis of his school certificate wherein his date of birth was 05.09.2000. Ultimately, the case was transferred to Juvenile Justice Board, Palwal. The petitioner herein moved an application for grant of regular bail before the Juvenile Justice Board, Palwal but the same was declined. Thereafter, an appeal was preferred which too came to be declined leading to the challenge in the instant revision petition.

Counsel for the petitioner relies upon the judgments rendered in *Bittu vs. State of Haryana, 2015 (2) RCR (Criminal) 316*, *Rabi Khan alias Salman vs. State of M.P., 2015 (4) RCR (Criminal) 332*, *Karna Ram vs. State of Rajasthan, 2015 (7) RCR (Criminal) 484* and *Praveen Khokhar vs. State of Rajasthan, 2015 (6) RCR (Criminal) 585* to contend that the courts below have erred while declining the grant of bail to the petitioner.

Per contra, learned counsel appearing on behalf of the respondent-State urges that the petitioner herein is not entitled to grant of regular bail on account of the fact that he has been involved in heinous crime of rape committed upon the prosecutrix.

I have heard learned counsel for the parties and gone through the paper book.

The provisions of Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (*for short 'the Act'*) are mandatory in nature. Section 12 of the Act stipulates that 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 or in any other law for the time being in force, be released on bail with or without surety and placed under the supervision of a Probation Officer or under the care of any fit person. The bail can only be denied in those cases where it appears that release is likely to bring that person 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. In declining bail, the Board shall record the reasons for declining the bail and circumstances that led to that decision.

The learned appellate Board dismissed the bail application on the ground that the juvenile is likely to come in contact with the other two accused name in the FIR since they had not been arrested and would expose him to moral, physical and psychological danger and the said release would defeat the ends of justice. One of the grounds would be sufficient to reject the bail application.

In the instant case, the Juvenile has been in custody since 22.02.2016. As per the Act, the entire proceedings have to be completed within a period of six months and since the two accused, associated in the crime, have not been arrested, it would not become a ground for declining the bail.

Accordingly, relying upon the judgments referred to above and in view of the fact that the bail could not be refused on the ground of gravity of the offence, without expressing any opinion on the merit of the

case, the present petition is allowed and the petitioner is ordered to be released on regular bail on his furnishing the adequate personal bond and surety bond to the satisfaction of Principal Magistrate, Juvenile Justice Board/Duty Magistrate concerned.

Petition stands disposed of.

December 14, 2016

Ansari

**(JAISHREE THAKUR)
JUDGE**

Whether speaking/reasoned

Yes

Whether reportable

No