

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

Crl. Rev. No.466 of 2016 (O&M)

Date of Decision: 11.02.2016

Sandeep @ Sipi

....Petitioner

Versus

State of Punjab

....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. Gurmeet Singh Saini, Advocate
for the petitioner.

Mr. Rupam Aggarwal, D.A.G., Punjab
for the respondent-State.

DAYA CHAUDHARY, J.

Crl. Misc. No.4158 of 2016

Allowed as prayed for.

Crl. Rev. No.466 of 2016

The present revision petition has been filed to challenge the impugned order dated 11.12.2015 passed by the Sessions Judge, Ferozepur, whereby, the appeal of the petitioner has been dismissed and impugned order dated 16.11.2015 passed by the Principal Magistrate, Juvenile Justice Board, Ferozepur, whereby, the application of the petitioner under Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (here-in-after referred to as `the Act, 2000) for grant of

bail has been dismissed.

Learned counsel for the petitioner submits that the petitioner was juvenile at the time of alleged occurrence and he was not involved in the offence in any manner and hence, no offence was made out against him. The FIR, in question, was registered after a delay of ten days and the said delay has not been explained. Learned counsel also submits that even the medical examination of the prosecutrix was conducted after ten days of the alleged occurrence. As per medical examination, no internal and external injury was found on the private part of the prosecutrix and hymen was found intact. Learned counsel also submits that the proper inquiry was not conducted and the petitioner was implicated due to party fiction. The petition filed by the petitioner under Section 12 of the Act, 2000 has been dismissed and thereafter, the appeal filed against the said order has also been dismissed, whereas, the petitioner, being juvenile, is entitled for bail. Petitioner is in custody since 28.10.2015.

Learned counsel for the respondent-State opposes the grant of bail to the petitioner on the ground of seriousness of offence and also because of the fact that the victim was six years of age.

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, the complaint was made by mother of the victim alleging therein that rape was committed upon her daughter, who was six years of age. An application was moved before the Principal Magistrate, Juvenile Justice Board, Ferozepur, which was dismissed. Thereafter, the appeal filed against the said order before the Sessions Judge, Ferozepur was also dismissed. The petitioner has been declined bail on the ground that he was juvenile at the time of alleged occurrence and his release

would defeat the ends of justice and would bring him in association with non criminals and expose him to moral, physical and psychological danger.

Section 12 of the Act, 2000 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.”

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 the 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 16.11.2015 passed by the Principal Magistrate, Juvenile Justice Board, Ferozepur, 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 28.10.2015 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 16.11.2015 passed by the Principal Magistrate, Juvenile Justice Board, Ferozepur and order dated 11.12.2015 passed by the Sessions Judge, Ferozepur 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, Ferozepur.

11.02.2016
gurpreet

(DAYA CHAUDHARY)
JUDGE