

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

**Criminal Revision No.885 of 2016  
Date of decision: 26.05.2016**

**Abhey @ Matru**

**..Petitioner**

**Versus**

**State of Haryana**

**..Respondent**

**CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY**

- 1. Whether reporters of local newspapers may be allowed to see judgment? Yes**
- 2. To be referred to reporters or not? Yes**
- 3. Whether the judgment should be reported in the Digest? Yes**

**Present:** Mr. Ram Darshan Yadav, Advocate  
for the petitioner.

Mr. Arun Kumar, AAG, Haryana  
for the respondent – State.

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**Daya Chaudhary, J. (Oral)**

The present revision petition has been filed to challenge order dated 11.02.2016 passed by Principal Magistrate, Juvenile Justice Board, Rewari (hereinafter called as 'the trial Court') as well as order dated 23.02.2016 passed by the Additional Sessions Judge, Rewari (hereinafter called as 'the Appellate Court'), whereby, the bail of the petitioner has been declined.

Briefly, the facts of the case are that FIR No.21 dated 06.02.2016 was registered under Sections 376 and 506 read with Section 34 of Indian Penal Code at Police Station Kosli, District Rewari against the petitioner. The petitioner was declared juvenile as his date of birth is 07.03.2001. The investigation of the case was completed and the petitioner

was arrested on 07.02.2016 and being juvenile, he was confined in Observation Home at Hisar. The petitioner moved an application for grant of bail before the trial Court but the same was dismissed vide order dated 11.02.2016 on the ground that there is every possibility of mental and physical danger to him from the opposite party. Aggrieved by said order, the petitioner-jvenile filed an appeal before the Appellate Court, which was also dismissed on 23.02.2016 on the ground that there are reasonable chances for believing that his release may bring him in association of any known criminal or expose him to moral, physical and psychological danger. It was also mentioned that there is every possibility of physical danger from the opposite party.

After losing the case before the two Courts below, the present revision petition has been filed by raising various grounds.

Learned counsel for the petitioner submits that at the time of occurrence, the petitioner was less than 15 years of age and the prosecutrix was more than 20 years of age. Learned counsel for the petitioner has also relied upon the certificate dated 09.02.2016 issued by the Principal of the school and submits that both the Courts below have not taken this fact into consideration and bail has been declined only on the ground that there are reasonable chances for believing that his release may bring him in association of any known criminal or expose him to moral, physical and psychological danger. However, there was no material on record to substantiate the observation as the petitioner is not having any criminal background as neither he nor any of his family members are involved in any criminal case. Learned counsel also submits that the petitioner undertakes

petitioner also undertakes to abide by any of the terms and conditions to be imposed by this Court or by the trial Court while granting bail and to appear on each and every date before the trial Court as and when directed.

Learned State counsel opposes grant of bail to the petitioner on the ground of seriousness of the offence.

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

The facts of lodging of the FIR, age of the victim as well as of the accused are not disputed. The application for grant of bail moved by the petitioner-jvenile before the trial Court was dismissed and thereafter, an appeal filed against said order was also dismissed by the Appellate Court. The bail of the petitioner has been declined on the ground that it would bring him in association with known criminals and will expose him to moral, physical and psychological danger.

Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as 'the Act, 2000') deals with bail to juvenile, which 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.”

Both the Courts below have declined bail to the petitioner-juvenile only on the ground that his release would bring him in association with known criminals or expose him to moral, physical or psychological danger.

In the present case while declining bail, the relative provisions

provisions of Section 12 of the Act, 2000, 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 prescribed under Section 12 (1) of the Act, 2000 was existing.

The word “**association**” has been defined in Concise Oxford Dictionary (6<sup>th</sup> Edition) as an act of associating; organised body of persons for a joint purpose; fellowship, companionship; mental connection between related ideas.

The above meaning of word “**association**” has also been adopted in Legal Glossary, Government of India, 1988 Edition.

Thus, to prove “**association**”, it must be shown that the persons so joined, have a common purpose and that there is a mental connection between their related ideas. In such view of the matter, if a person has joined a known criminal or criminals only in a single case, by that, it cannot be inferred that this single act would bring that person in association with known criminal (s). There can be apprehension of his associating with known criminal (s) only when there is sufficient evidence to show that he has been joining them regularly so as to give an impression that he would continue to join them in future also.

The petitioner in the present case is stated to be the student and his family is not having any criminal background as nothing in this regard has been mentioned in both the orders while declining bail and it has not come on record that the social investigation report sent to the Court by Probation Officer is unfavourable to the juvenile for his release on bail.

Moreover, the father of the petitioner has come forward for giving an

undertaking that the petitioner will not be involved in any criminal activities till he continues on bail. The object of the Act is to provide care, protection, development and rehabilitation of neglected and delinquent juveniles.

A perusal of Section 12 of the Act, 2000 reveals that it incorporates a non-obstante clause which means that irrespective of anything contained in the Code of Criminal Procedure or in any other law for the time being in force, a juvenile in conflict with law has to be released on bail; refusal of bail is possible only in three eventualities which are well-explained in Section 12 of the Juvenile Act itself. It, thus, follows that refusal of bail to a juvenile is to be ordered only in any of the three situations specified under Section 12(1) of the Juvenile Act. These three situations reads as below:

- (i) if there appear reasonable grounds for believing that the release of the juvenile is likely to bring him into association with any known criminal;
- (ii) the release will expose the juvenile to moral, physical or psychological danger; and,
- (iii) his release would defeat the ends of justice.

Even while denying the benefit of bail to a juvenile in conflict with law, the court has not only to refer to one or more of these three grounds but also to record its satisfaction founded on some relevant material, availability of which has to be shown on the record.

It, thus, implies that no reasons other than those mentioned in Section 12(1) of the Juvenile Act are to be valid for refusal of bail. Since gravity of the offence is not incorporated as one of the reasons for refusal of

bail, this ground cannot be taken into consideration for rejection of request

for bail.

A perusal of order passed by the trial Court transpires that rejection of bail has been ordered primarily on the ground of gravity of offence and an attempt has also been made to justify refusal on the ground that “ends of justice would be denied if bail is granted” but no such material has been referred to while arriving at such a conclusion.

Mere reproduction of language of Section 12 (1) of the Act, 2000 in order to reject the application for bail would not be in tune with the letter and spirit of the law relating to bail of the juveniles in conflict with the law. Not only the trial Court went wrong in denying the bail but the appellate Court has also dismissed the bail without mentioning any reason or circumstances.

By taking into consideration the aforesaid facts of the case, it has neither come in the orders passed by both the Courts below nor in the argument raised by learned counsel for the respondent-State to show as to how the petitioner would come in contact with hard core criminals.

Hon’ble the Apex Court in the case of **Swati Maliwal Jaihind Chairperson Delhi Commission of Women Vs. Raju through Juvenile Justice Board and others** 2016 (1) Recent Apex Judgements 18 has held in as under:-

“Rule 17 (3) provides that the release shall be as per the pre-release and post-release plan prepared under the Individual Care Plan and reviewed from time to time by the Management Committee set up under Rule 55. Rule 50 (12) provides for developing an individual care plan with the ultimate aim of the

child being rehabilitated and reintegrated based on their case history, circumstances and individual needs. Such individual care plan specifically needs consultation with the concerned juvenile while determining his care plan. Rule 55 makes it mandatory for the Management Committee to consider and review periodically post-release or post restoration follow up. Rule 65 also provides for a detailed procedure of restoration of the juvenile back to the family and follow-up action by the Juvenile Justice Board. It also includes when a juvenile expresses his unwillingness to be restored back to the family, the Board shall make a note of it in its records in writing and such juvenile shall not be coerced or persuaded to go back to the Probation Officer establishes that restoration to family may not be in the best interest of the juvenile or if the parents or the guardians refuse to accept the juvenile back. The said Rule also provides for submitting a quarterly follow-up report to the JJB by the concerned Child Welfare Officer or Probation Officer or the non-governmental organization for a period of two years. The follow-up report shall clearly state the situation of the juvenile post restoration and the juvenile's needs to be met by the State Government in order to reduce further

vulnerability of the juvenile.”

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

In view of the totality of the facts 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, 2000 and without having any material on record, the bail application of the petitioner has been declined. The impugned orders are not sustainable in the eyes of law and as such, the same are liable to be quashed.

Learned counsel for the petitioner on instructions from father of the petitioner, who is present in the Court, submits that the father of the petitioner is working as *Sewadar* in District Bar Association, Gurgaon and he undertakes that he will keep his son with him at Gurgaon and will not allow him to remain at a place where the prosecutrix is residing. He also undertakes to keep his son busy in studies as he is a student and also to assist him in doing some activities relating to environment. The father of the petitioner has himself offered plantation of 50 saplings in Judicial Complex with the permission of the District and Sessions Judge, Gurgaon. He will not only do the plantation work but would also make all efforts to monitor the proper growth of those plants with the help of his son so that he may contribute towards activities relating to environment.

Accordingly, the present revision petition is allowed and the

impugned orders i.e. order dated 11.02.2016 passed by the trial Court and

order dated 23.02.2016 passed by the Appellate Court are hereby set aside.

The petitioner is directed to be released on bail subject to the following conditions:

- i) the petitioner is placed under supervision of the probationary officer, who shall file periodical reports over the Juvenile before the Board till the inquiry against him is completed in the proceedings.
- ii) the father of the petitioner shall stand as a surety for release of petitioner on bail. He shall execute a bond for ₹ 10,000/- undertaking good conduct of juvenile and also in keeping him away from associating with criminals while he continues to be on bail in the present proceedings.
- iii) the father of the petitioner shall plant 50 saplings in the Judicial Complex with the permission of District and Sessions Judge, Gurgaon and shall make all efforts to monitor those plants with the help of his son.
- iv) the petitioner and his father shall report before the Juvenile Justice Board as and when directed without default till the proceedings are over.
- v) in the event of any adverse report filed against the juvenile by the probation officer or on any default or violation of the conditions imposed above, it is open to the Juvenile Justice Board to revoke the bail granted to petitioner without having any further orders from this Court, but, in accordance with law.

A copy of this order be sent to District and Sessions Judge, Gurgaon to allow the father of the petitioner to do the plantation work as undertaken by him before this Court and to take care of plants with the assistance of his son as per requirement of the place and a report be sent before this Court to show that the needful has been done.

**26.05.2016**  
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**(DAYA CHAUDHARY)**  
**JUDGE**