

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

**CRR No.1820 of 2017 (O&M)
Decided on: 31.05.2017**

Gabbar minor through his father

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Kamal Chaudhary, Advocate for the petitioner.

Mr. Amrik Narwal, DAG, Haryana.

REKHA MITTAL, J.

CRM No.16225 of 2017

Prayer in this application is for condoning delay of 132 days in filing the petition.

Heard.

In view of averments made in the application supported by an affidavit of Inder, father of the applicant-petitioner, the application is allowed and delay of 132 days in filing the petition stands condoned.

MAIN CASE

The present petition directs challenge against orders dated 07.09.2016 passed by the Principal Magistrate, Juvenile Justice Board, Faridabad and dated 03.10.2016 by the Additional Sessions Judge, Faridabad whereby application of the petitioner for release on bail was dismissed by the Juvenile Justice Board (hereinafter to be referred to as 'the Board') and the order passed by the Board has been affirmed in appeal.

Counsel for the petitioner has submitted that the Juvenile Justice (Care and Protection of Children) Act 2000 (in short 'the Act')

was enacted with a clear intent to safeguard interests of juveniles in conflict with law. Section 12 of the Act provides for bail of a juvenile. Sub-Section (1) of Section 12 says that a juvenile shall be released on bail with or without surety notwithstanding anything contained in the Code of Criminal Procedure or any any other law for the time being in force. In the second part of Section 12(1) of the Act, certain circumstances have been prescribed where a juvenile shall not be released on bail namely if there appears reasonable grounds for believing that 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. It is further argued that the Board dismissed the application primarily on the ground that the juvenile has committed penetrative sexual assault with a minor girl of 15 years, therefore, from grave nature of the allegations levelled against the applicant/juvenile, it appears that he is very much capable of apprehending what is right and wrong and understands his actions sufficiently and release of such a juvenile would defeat the ends of justice. For this purpose, the Board has relied upon judgment of this Court “*Shimil Kumar vs State of Haryana*”, 2013(4) RCR (Criminal)

16. It is further argued that the judgment in *Shimil Kumar's case (supra)* pertains to a case where the petitioner and his accomplices were stated to have caused death of Sheela Devi and severed her head and hand which were subsequently recovered upon the disclosure statement made by them. Likewise, the slippers and saree which the deceased was wearing were also recovered at their behest. The application filed by the

juvenile for release on bail was declined by the Board and the Appellate Court upheld the order on the ground that there were reasonable grounds for believing that release of juvenile/petitioner is likely to bring him into association with known criminal or expose him to moral, physical or psychological danger and his release would defeat the ends of justice. It is argued with vehemence that gravity of offence itself is not sufficient to conclude that release of the juvenile will defeat the ends of justice.

Counsel representing State of Haryana has supported the impugned orders with the submission that the proceedings pending before the Board are likely to be concluded shortly.

I have heard counsel for the parties, perused the paperbook and the police records.

Perusal of the police records would reveal that the prosecutrix aged about 16 years recorded her statement under Section 164 Cr.P.C. wherein she had deposed that she left with Gabbar according to her volition. They stayed at village Jahupura (Agra) for one month. On 15.04.2016, they performed marriage in a Mandir of village Jahupura. Her parents wanted her to live with them but she wanted to reside with Gabbar.

In Shimil Kumar's case (supra) this Court has held in paras 24 to 28, reproduced hereunder for ready reference:-

“24. But in the cases of aggravated offences, what is of importance to establish whether a person is a child or not, is his ability to comprehend what is right and what is wrong, what is lawful and what is unlawful and whether

he understands the consequences of his actions. It is the advancement of his mental faculty that would suggest whether he is an adult or a juvenile and for this purpose, there has to be a specialised examination of the child at the hands of experts who can evaluate the ability of such a child to segregate good and bad, the lawful and unlawful and the consequences ensuing therefrom and this would show his maturity or immaturity to answer for his deeds.

25. It is the factors related to growth and maturity psychologically and socially, but not entirely biologically, which would give an insight as to whether a person is a child or an adult and merely because the age of 18 years would confer a lot of social and political privileges in a civil society, would not certainly mean that a person before attainment of such an age continues to remain a child and eluding adulthood, while he in his conduct otherwise demonstrates the capability of correct comprehension.

26. It is, therefore, the competence of a juvenile which has to be established before the Board and the Board and the courts ought not to automatically assume that the statutory definition would confer the halo of a juvenile and give him an undeserving protection and benefits.

27. Apart from determining such abilities, an enquiry should also establish the social factors surrounding such a person in conflict with law, as they also possibly may reveal the cause of a distorted or a perverted mind set, which may eventually lead to an appreciation of the ability of correct comprehension.

28. After the Juvenile Justice Board and the court concerned have addressed the afore-expressed concern which can be achieved by involving a professional psychologist/psychiatrist and sociologists, the Board can

then proceed to determine the second aspect as to whether to release a juvenile on bail which would now be dependent upon the first question because if a person is found capable of comprehending what is right and wrong, and is enabled to understand sufficiently his actions, then as an automatic corollary it should follow that release of such a person on bail would defeat the ends of justice and the remaining aspects of the likelihood of a child coming into contact with any known criminal or exposing him to moral, physical or psychological danger, would be questions dependent solely on factors and inferences which such facts may throw up.”

In the case at hand, there is nothing on record suggestive of the fact that either the Board or the Appellate Court has addressed aforesaid concerns referred to in the judgment by involving any professional psychologist/psychiatrist and sociologist to record such a finding that the juvenile was capable of comprehending what is right and wrong and is able to understand sufficiently his actions to record a finding that release of the juvenile would defeat the ends of justice. In view of the above, I find merit in contentions of the petitioner that the basis on which the petitioner has been denied benefit of bail by the Courts below are unfounded, therefore, orders impugned cannot be allowed to sustain.

No other point has been raised.

For the foregoing reasons, the petition is allowed. The petitioner is ordered to be released forthwith subject to satisfaction of the Board.

31.05.2017
yakub

(REKHA MITTAL)
JUDGE