

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

CRR No.720 of 2017

Date of decision: 01.03.2017

Jabbar

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

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

Ritu Bahri, J.

This petition has been filed against the order dated 16.01.2017 passed by the Additional Sessions Judge, Palwal, whereby appeal filed by Jabbar-petitioner against the order dated 14.12.2016 passed by the Juvenile Justice Board, Palwal has been dismissed.

FIR No.50 dated 14.02.2016, under Sections 376, 366/120-B IPC was registered at Police Station, Hathin on the basis of complaint made by Ramjan-complainant with the allegation that his niece (victim) had gone missing. Later on, she was recovered on 20.02.2016 and thereafter, her statement was recorded under Section 161/164 Cr.P.C. On completion of investigation, challan was presented against the child (petitioner) in conflict with law for commission of offences under Sections 120-B/366/376 IPC. Thereafter, he was charge-sheeted under Sections 120-B/366/376 IPC. Vide order dated 08.08.2016 passed by the Additional Sessions Judge, Palwal, Jabbar was declared as Juvenile and the case was sent for disposal before

the Juvenile Justice Board, Palwal.

As per Section 15 of the Juvenile Justice Act, the Board constituted under the said Act had to conduct preliminary assessment regarding mental and physical capacity of the child in conflict with law to commit the said offence.

On the date of occurrence i.e. 10.02.2016, the child (petitioner) was 17 years, 08 months and 08 days old. Accordingly, he was above the age of 16 years on the date of occurrence. During preliminary assessment, the child was examined by the Counsellor and Medical Examiner in the presence of Principal Magistrate as well as other Members of the Juvenile Justice Board on 29.11.2016.

The question for consideration before both the Courts below was, “whether the child in conflict with law was an adult or not.”

After perusing the Social Investigation Report, report of the Counsellor as well as Member of the Juvenile Justice Board, the health and state of mind of the child in conflict with law was found to be normal. He was physically fit and possessed adequate knowledge of good and bad act. In the enquiry, it was not found that he was a drug addict or he had suicidal tendency or he had been exposed to media, internet, pornography and media depicting violence or he was ever recruited or used by non-state actor. It was not the case of the juvenile that he had committed the offence under extreme mental trauma or there was any history of abuse and exploitation. Neither the offence was alleged to have been committed for his survival nor there was any history of mental illness or being a victim of any offence. As per personal examination report submitted by the Medical Examiner, he (petitioner) was well oriented to time, place and person and was fit from

disease. On the basis of this opinion, the Juvenile Justice Board came to a conclusion that the child (petitioner) had physical and mental capacity to commit the offence under Section 376 IPC on the date of occurrence i.e. 10.02.2016 and he was fully capable to understand the consequence of the offence. Ultimately, vide order dated 14.12.2016, the case was transferred to the Children's Court, Palwal to conduct the trial of the child in conflict with law as adult. Appeal against the said order was dismissed by the Additional Sessions Judge, Palwal, vide his order dated 16.01.2017.

Learned counsel for the petitioner has argued that the Counsellor was a Public Prosecutor and no proper investigation was carried out by the Board as contemplated by proviso of Section 15 of the Act.

This argument is liable to be rejected because at the time of passing the order dated 14.12.2016, the Juvenile Justice Board, Palwal, had taken into consideration the report of the Counsellor and the Social Investigation Report. The petitioner was also examined by the Medical Examiner. Section 15 (1) of the Act is reproduced as under:-

“15. (1) In case of a heinous offence alleged to have been committed by a child, who has completed or is above the age of sixteen years, the Board shall conduct a preliminary assessment with regard to his mental and physical capacity to commit such offence, ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence, and may pass an order in accordance with the provisions of subsection (3) of section 18:

Provided that for such an assessment, the Board may take the assistance of experienced psychologists or psycho-social workers or other experts.”

Object of Section 15 of the Act is to assess the physical and mental capacity of the child to commit such offence, which the Juvenile Justice Board may do with the assistance of experience psychologists or psycho-social workers or other experts. In the present case, the Juvenile

Justice Board got three reports i.e. (i) Social Investigation Report, (ii) report of Counsellor and (iii) report of Medical Examiner. After going through these reports, the Juvenile Justice Board had rightly concluded that the petitioner had the physical and mental capacity to commit the offence under Section 376 IPC on the date of occurrence i.e. 10.02.2016 and he was fully capable to understand the consequence of the offence. Accordingly, having examined the impugned orders, no illegality, much less perversity, has been found therein wanting interference by this Court while exercising its revision jurisdiction.

Resultantly, the present petition is dismissed.

01.03.2017
ajp

(RITU BAHRI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No