

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

**CRR No.740 of 2017
Decided on: 02.06.2017**

Vishal @ Kapil

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Abhimanyu Singh, Advocate for the petitioner.

Ms. Dimple Jain, AAG, Haryana.

REKHA MITTAL, J.

The petitioner has filed the present petition to assail the orders passed by the Courts below whereby his application for grant of bail was dismissed by the Principal Magistrate, Juvenile Justice board, Gurgaon on 16.12.2016 and the appeal preferred by him against order passed by the Juvenile Justice Board (hereinafter to be referred to as 'the Board') did not find favour with the Additional Sessions Judge, Gurgaon.

To decide the controversy, a brief reference to the facts of the case is pertinent. FIR No.353 dated 13.06.2016 under Sections 395, 397, 120-B, 450, 376 and 506 of the Indian Penal Code, 1860 (in short 'IPC') was registered at Police Station Sector 10, Gurgaon. One of the accused namely Virender was arrested on the spot but the other unidentified persons were arrested later. During course of investigation, on the basis of statement made by Virender, petitioner was nominated as an accused. Recovery of one countrymade pistol was stated to be effected from him and the same was taken into police possession.

Before the Board could complete enquiry in terms of Section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (in short 'the Act') application for release of the petitioner, child in conflict with law, was filed and the same came to be dismissed by the Board. On conclusion of enquiry, the petitioner was held to be an adult, to be tried by the Special Judge under the Act. As has been noticed hereinbefore, appeal preferred by the petitioner against the order passed by the Board was dismissed by the First Appellate Court.

Counsel for the petitioner has submitted that the petitioner is sought to be indicted in the crime on the basis of statement made by a co-accused and recovery of one countrymade pistol purportedly effected during his police custody. It is further submitted that the Board dismissed the application for bail prior to holding any enquiry *whether the petitioner is a child or not and 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*. Further submitted that in absence of any such finding by the Board before declining his application for bail, the findings recorded by the Board to the effect that there is every likelihood that release of the petitioner is likely to bring him into association with any known criminal or would expose him to moral, physical or psychological danger or his release would defeat the ends of justice cannot be allowed to sustain. It is further argued that since the aforesaid observations by the Board is without any foundation, the Court in appeal has committed illegality by putting its seal on the order passed by the Board. For this purpose, he

has referred to judgment of this Court ***“Shimil Kumar vs State of Haryana”***, 2013(4) RCR (Criminal) 16.

Another submission made by counsel is that the petitioner has been charged for committing offence under Sections 395 and 397 IPC. Offence under Section 376 IPC in regard to committing rape upon Manisha has been attributed to Virender. Manisha has already been examined in the case and in her cross-examination, she has categorically deposed that she cannot identify the 5th accused present in the Court. As per the Court observations, the said person is Vishal (petitioner herein). Further pointed out that Manisha PW3, the material witness in the case has identified the remaining four accused in her testimony recorded during trial. Counsel would urge that keeping in view the fact that the Board dismissed the application for bail without addressing the concern laid down in paras 24 to 27 of the judgment in ***Shimil Kumar's case (supra)*** coupled with the factum that the star witness of the prosecution has failed to connect the petitioner with the crime, petitioner deserves to be released on bail pending conclusion of trial.

Counsel representing State of Haryana has supported the impugned orders with the submission that in view of gravity of offence punishable under Sections 395 and 397 IPC, the petitioner does not deserve to be released on bail.

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

Indisputably, the Board dismissed the application for bail

before an enquiry in terms of Section 15 of the Act was completed. Perusal of the order passed by the Board would make it manifestly clear that there is no factual background for the observations made by the Board in order to bring case of the petitioner within the exceptions envisaged in Section 12 of the Act.

On a query raised by the Court, counsel representing State of Haryana has fairly conceded that no other criminal case much less of a similar kind had ever been registered against the petitioner. She has also not disputed that star witness in the case has not identified the petitioner to be one of the persons who entered her house on the fateful day. The petitioner is in custody since June, 2016 and conclusion of the trial is likely to take its own time. There is no allegation against the petitioner that he is likely to misuse concession of bail, if so allowed. In view of the above, the present petition is allowed and the petitioner is ordered to be released forthwith subject to satisfaction of the trial Court.

For the foregoing reasons, the petition stands disposed of with the aforesaid terms. However, nothing stated hereinbefore shall be construed as an expression of opinion on merits of the case.

02.06.2017
yakub

(REKHA MITTAL)
JUDGE

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