

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

**CRM-M No.3049 of 2018
Date of decision : 26.10.2018**

Happy

.....Petitioner

Versus

State of Haryana

...Respondent

CORAM : HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present : Mr. Robin S. Hooda, Advocate for the petitioner.

Ms. Tanushree Gupta, D.A.G., Haryana.

* * *

DAYA CHAUDHARY, J.

Petitioner Happy has filed the present petition under Section 439 of the Code of Criminal Procedure, 1973 (for short – ‘Cr.P.C.’) for grant of regular bail to him in case FIR No.522 dated 25.11.2016 under Sections 364, 365, 302, 201 read with Section 34 of the Indian Penal Code, 1860 (for short – ‘IPC’), registered at Police Station – Ganaur, Distt. Sonipat, during pendency of the trial.

Learned counsel for the petitioner submits that initially the FIR was registered under Section 365 IPC as the allegations were that the brother of the complainant was missing since 21.11.2016. Later on offences under Sections 364, 302, 201 read with Section 34 IPC were also added. Name of the petitioner was not mentioned in the FIR and he has falsely been implicated. There is no eye-witness of the alleged occurrence. The FIR was lodged with delay as the alleged occurrence is stated to have occurred on 21.11.2016 but the FIR was registered on 25.11.2016 and no explanation

thereof has been given. Petitioner was declared as juvenile in conflict with law. The case is based on circumstantial evidence. No specific role has been attributed to the petitioner. Nothing is to be recovered from him. He is in custody since 15.12.2016. The investigation has been completed and challan has also been presented. His custodial interrogation is not required. Learned counsel further submits that the application for bail filed by the petitioner before learned Additional Sessions Judge, Sonipat has been dismissed on the ground that he was involved in a case of rape, whereas he has been acquitted in that case vide judgment dated 13.07.2018. No purpose would be served by keeping him in custody.

Learned State counsel has not disputed the period of custody undergone by the petitioner as well as the factum of his acquittal in the other case of rape. It is also not disputed that the petitioner is a juvenile and his name is not mentioned in the FIR. The factum of delay in lodging of FIR is also not disputed.

Heard arguments of learned counsel for the parties and have also perused the contents of the FIR and other documents available on the file.

Admittedly, the petitioner has been declared as juvenile in conflict with law and he is in judicial custody since 15.12.2016. His name is also not mentioned in the FIR. The bail application filed by him before learned Additional Sessions Judge, Sonipat, has been dismissed vide order dated 22.12.2017 on the ground that he may come in contact with co-accused Pavitar and Bijender, who are absconding, but it is not mentioned

in the order as to how he would come in the contact of aforesaid co-accused.

As per the allegations in the FIR, the complainant has stated that his brother Pradeep alias Bhagta was missing from the house since 21.11.2016 and he was having suspicion on accused Bijender, Pavitar, Rahul and one unknown person. The application for bail was dismissed by learned Additional Sessions Judge, Sonipat, only on two reasons that the petitioner may come in contact with the co-accused and he was also involved in the rape case, whereas in that case of rape, he has been acquitted vide judgment dated 13.07.2018 and he is not related to the co-accused in any manner. Admittedly, no role has been attributed to the petitioner in the FIR. He is involved only in place of the unknown person who has been stated to be present along with the co-accused.

The object of keeping a person in custody is to ensure his availability to face trial and to receive sentence that may be imposed. Purpose of detention is not supposed to be punitive or preventive. Delay in commencement and conclusion of trial is an important factor, which is required to be taken into consideration and as such, an accused cannot be kept in custody for indefinite period in case the trial is not likely to be concluded within reasonable time. This view has been observed by Hon'ble the Apex Court in cases *Kalyan Chandra Sarkar Vs. Rajesh Ranjan 2005(1) R.C.R. (Criminal) 703, State of U.P. Vs. Amarmani Tripathi 2005(4) R.C.R. (Criminal) 280, State of Kerala Vs. Raneef 2011 (1) R.C.R. (Criminal) 381* and *Sanjay Chandra Vs. CBI 2011(4) R.C.R.*

(Criminal) 898.

Learned State counsel has not been in a position to show as to what evidence has been collected by the investigating agency to connect the petitioner in the commission of offence. Investigation has been completed and report under Section 173 Cr.P.C. has also been presented. Petitioner was declared as juvenile in conflict with law, but he is facing trial as an adult. While rejecting the bail application, it has been mentioned that in case the petitioner- juvenile is released on bail, there is every likelihood that he may come in contact with other co-accused who are absconding and may expose him to moral, physical and psychological danger, but nowhere it is mentioned that as to how he could come in contact with other co-accused or criminals as he is not having any criminal background. He has no relation with co-accused Pavitar and Bijender, who are absconding.

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 or placed under the supervision of a Probation Officer or under the care of any fit institution or 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.”

In the present case while declining bail, the relevant provisions have not been considered by the Court below, whereas, as per 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 (6th 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.

In the present case the petitioner as well as his family is not having any criminal background as nothing in this regard has been mentioned in the order 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. The object of the Act, 2000 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 Act, 2000 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.

By taking into consideration the aforesaid facts of the case, it has neither come in the order passed by the Court 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, the Court below has 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.

Accordingly, by considering the period of custody undergone by the petitioner, his role in the commission of offence and keeping in view the fact that he is a juvenile, the present petition is allowed and the petitioner is directed to be released on regular bail on furnishing adequate bail/surety bonds to the satisfaction of the trial Court.

26.10.2018

sunil yadav

**(DAYA CHAUDHARY)
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No