

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

CRM-M-48995-2018

Date of Decision: 18.12.2018

Rishi Pal

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM : HON'BLE MS. JUSTICE JAISHREE THAKUR

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

Ms. Rajni Gupta, Sr. D.A.G. Punjab.

Mr. P.P. Chahar, D.A.G. Haryana.

Mr. Manish Soni, Advocate.

JAISHREE THAKUR, J. (Oral)

This is a petition that has been filed for grant of regular bail to the petitioner in case FIR No.59 dated 02.04.2017 under Sections 363, 366-A, 376 IPC and Sections 4, 6 & 8 of Protection of Children from Sexual Offences Act, 2012, registered at Police Station Adampur, Jalandhar.

Learned counsel for the petitioner contends that the petitioner had been declared as a juvenile by order dated 12.7.2017. However, he was directed to be tried as an adult after the preliminary assessment under Section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short "the Act") had been done. This order was challenged before the Court of Additional Sessions Judge, Jalandhar, who has allowed the appeal by order dated 7.12.2018 holding that as on the date of occurrence the date of birth of the juvenile is 12.10.2002 while relying on Ex.DX. The Court has set aside the assessment that has been done and has declared the petitioner to be tried as a juvenile.

In view of the fact that the petitioner herein is to be treated as a juvenile under the provision of the Juvenile Justice, Act, Section 12 of the Juvenile Justice would be applied to him for consideration of his bail which Section reads as under:

“12. Bail to a person who is apparently a child alleged to be in conflict with law: (1) When any person, who is apparently a child and is alleged to have committed a bailable or non-bailable offence, is apprehended or detained by the police or appears or brought before a Board, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1972) 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 person:

Provided that such person shall not be so released if there appears reasonable grounds for believing that the release is likely to bring that person into association with any known criminal or expose the said person to moral, physical or psychological danger or the person's release would defeat the ends of justice, and the Board shall record the reasons for denying the bail and circumstances that led to such a decision.

(2) When such person having been apprehended is not released on bail under sub-section (1) by the officer in charge of the police station, such officer shall cause the person to be kept only in an observation home in such manner as may be prescribed until the person can be brought before a Board.

(3) When such person is not released on bail under sub-section (1) by the Board, it shall make an order sending him to an observation home or a place of safety, as the case may be, for such period during the pendency of the inquiry regarding the person, as may be specified in the order.

(4) When a child in conflict with law is unable to fulfill the conditions of bail order within seven days of the bail order, such child shall be produced before the Board for modification

of the conditions of bail.”

A bare reading of the said Section would stipulate that when any person who is apparently a child and is alleged to have committed a bailable or non-bailable offence is apprehended or detained by the police or appears or is brought before a Board, such person shall be entitled to be released on bail with or without surety or placed under supervision of a probation officer or under the care of any fit person.

A simple reading of the said section further contemplates that an application has to be made before a Board who would then further assess if his release is likely to be brought into association of any known criminal or will be exposed to moral, physical or psychological danger or whether release would defeat the ends of justice and while considering the said application for bail, a decision has to be taken for denying the bail.

In the instant case, petitioner herein has not approached the Board for necessary grant of bail by invoking Section 12 of the Act. In fact he approached the Children Court for grant of bail which came to be rejected.

Without going into the much detail and leaving the question open whether this Court should entertain the petition filed under 439 Cr.P.C read with Section 12 of the Juvenile Justice Act, at the present moment the petitioner herein who has already put in appearance before the Juvenile Justice Board is relegated to his remedy of filing of said application before the Board. In case the application is moved on or before 26.1.2018, the Board is directed to decide the matter expeditiously preferably within a period of two weeks.

The application be decided keeping in mind the law as settled

in by this Court in (1) Naveen (minor) v. State of Haryana (CRR-2486 of 2018 (2) Gaurav v. State of Haryana; 2016 (5) RCR (Criminal) 181 (3) Sandeep alias Sippy v. State of Punjab; 2016 (3) RCR (Criminal) 776.

Accordingly, the petition is disposed of.

18.12.2018
rajeev

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned **Yes/No**

Whether reportable **Yes/No**