

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

CRR-2485-2018

Date of decision: 27.09.2018

Naveen (minor)

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Ravi Kant Sharma, Advocate,
for the petitioner.

Mr. P. P. Chahar, DAG, Haryana.

JAISHREE THAKUR, J. (ORAL)

1. Petitioner Naveen, a juvenile in conflict with law (hereinafter called the juvenile) presently in protective custody in Observation Home, in FIR No.120 dated 11.03.2018, under Sections 363, 366-A, 376-D, 201 of Indian Penal Code and 6 of POCSO Act, registered at Police Station Tosham, District Bhiwani, by way of this revision petition has challenged order (Annexure P-2) dated 08.06.2018 passed by the Principal, Juvenile Justice Board, Bhiwani vide which his bail application was rejected and order (Annexure P-1) dated 07.07.2018 passed by the Additional Sessions Judge, (Exclusive Court), Bhiwani vide which his appeal filed against order (Annexure P-2) was dismissed.
2. The instant revision has been filed under Section 401 Cr.P.C.

read with Section 12 the Juvenile Justice (Care & Protection of Children) Act, 2000 praying for grant of regular bail to the juvenile in case

3. In brief, FIR No.120 dated 11.03.2018, was registered under Sections 363, 366-A, 376-D, 201 of Indian Penal Code and 6 of POCSO Act at Police Station Tosham, District Bhiwani. It was alleged by the prosecutrix that on 11.03.2018 at about 11:00 p.m. she went outside the house for answering the call of nature. At that time, three boys came there, gagged her mouth and put her in a car and was taken to the fields, where she was raped by them one by one, due to which she became unconscious. On regaining consciousness, she found herself in the school of her village. She disclosed the colour of the car as black and the name of one of the said three boys Ajay resident of village Dulheri and she did not know the remaining two boys, however, she could recognize both of them if they came in front of her. Eventually, FIR was registered on her statement naming Ajay and his unknown accomplice as persons who had committed the offence of rape.

4. Pursuant to the registration of the FIR, the matter was investigated and on 13.03.2018 the prosecutrix was taken to Child Protection Unit, Bhiwani where her statement was recorded. On 14.03.2017 she was produced before the SDJM, Tosham, who recorded her statement under Section 164 Cr.P.C. The petitioner was arrested on 17.03.2018 on the basis of statement made by the prosecutrix.

5. Being a minor, he was ordered to be tried as a juvenile. An application was preferred seeking bail which was opposed by the prosecution. The Juvenile Justice Board dismissed the bail application by order dated 08.06.2018 on the ground that the release of juvenile is likely to

bring him in association of criminals or expose him to moral, physical or psychological danger. The order was appealed before the Additional Sessions Judge, (Exclusive Court), Bhiwani who dismissed the appeal by upholding the order passed by the Juvenile Justice Board. Aggrieved against denial of bail, the instant revision petition has been preferred.

6. Mr. Ravi Kant Sharma, learned counsel for the petitioner, contends that by virtue of Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2002, the juvenile is entitled to bail as a matter of right, unless his case falls in the exceptions carved out in the provision. It is argued that nothing is available on the record to show that any of the 3 exceptions specified under Section 12 (1) of the Act exists for the bail to have been denied. Reliance is placed upon judgments rendered in ***Gaurav Versus State Of Haryana 2016 (5) RCR (Criminal) 781***, ***Sandeep Alias Sippy Versus State Of Punjab 2016 (3) RCR (Criminal) 776***, ***Sandeep Versus State NCT Of Delhi 2008 (1) RCR (Criminal) 146*** in support of arguments raised.

7. Per contra, Mr. P. P. Chahar, learned DAG, Haryana, vehemently opposes the grant of bail to the juvenile on the ground that he has been involved in a heinous crime and if released the juvenile would come into contact with known criminals or would be exposed to moral, physical or psychological danger. Reliance was placed upon a judgment rendered in ***Virendra Versus State Of UP 2014 (22) RCR (Criminal) 456*** wherein the Allahabad High Court held that bail for a juvenile could be denied if juvenile would be exposed to moral, physical and psychological danger and bail can also be refused to a juvenile on the ground that his

release would defeat the ends of Justice. While noting that the term 'ends of Justice' had not been defined under the Act of 2006, it was held that rape cannot be treated to be such an act which can be dubbed as a child's mistake committed during adolescence.

8. I have heard learned counsel for the parties and have also perused the pleadings and the impugned orders.

9. Admittedly allegations of rape have been leveled against the petitioner by the prosecutrix in her statement recorded. Application for grant of bail by the petitioner stands rejected by the Principal Magistrate, Juvenile Justice Board, Bhiwani as well as in the appeal. Bail has been denied on the ground that the petitioner is a juvenile and his release would defeat the ends of Justice and would bring him in association with known criminals, and expose him to moral physical and psychological danger.

10. The Juvenile Justice (Care and Protection of Children) Act, 2000 is the primary legal framework for juvenile justice in India. The act provides for a special approach towards the prevention and treatment of juvenile delinquency and provides a framework for the protection, treatment and rehabilitation of children in the purview of the juvenile justice system. Section 12 of the said Act pertains to grant of bail to a juvenile. Section 12 of the act of 2000 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 [for 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.

A bare reading of the aforesaid provision would reveal that a juvenile is to be released on bail. It is a mandatory requirement since the wording of the section is '*be released on bail with or without surety*'. It is only in certain circumstances, as spelt out under section 12 (1) that bail can be denied, that is if the Court forms an opinion that the juvenile if released would come 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.

11. In *Prakash versus State Of Rajasthan, 2006 Criminal Law Journal 1373*, it has been observed as:

“9. At the time of consideration of bail under section 12 of the act, the gravity nature of offence has no relevancy. The language of Section 12 of the Act using the word ‘shall’ is

mandatory in nature and providing non obstante clause by using the expression “notwithstanding anything contained in the code of criminal procedure, 1973 (2 of 1974) or any other law for the time being in force be released on bail” closed shows the intention of the legislature to grant bail to the delinquent juvenile offender by releasing him on bail who is arrested or produced before a court; however, with exception to release him on bail if they are reasonable grounds for believing that his 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 for the prosecution to bring on record such material while opposing the bail and to make out any of the ground is provided in the section which may persuade the court not to release the juvenile on bail.’’

12. The Courts below have failed to mention the reason or under which of the exceptions, as carved out in Section 12 (1) of the Act of 2000 would be applicable to the petitioner, to deny him bail. No exceptional circumstances have been pointed out, making the impugned orders unreasonable. Reliance placed by the counsel for the respondent-State on the judgments rendered would not be applicable in the light of the fact that gravity of offence is not a ground to deny bail to a juvenile in conflict with law. Denial of bail mechanically on the ground that ‘ends of Justice’ would not be served, is unwarranted especially when there are no cogent reason forthcoming, as in the instant case. Moreover, the presumption raised that on release he would indulge in other criminal activities is wholly unwarranted. Though rape is a heinous crime, gravity of the offence cannot be made a consideration for denial of bail.

13. Consequently, while accepting this revision petition, the juvenile is ordered to be released on bail subject to furnishing bail/surety bonds by his natural guardians to the satisfaction of the Principal Magistrate, Juvenile Justice Board, Bhiwani.

14. Revision stands allowed in the aforesaid terms.

27.09.2018
Satyawan

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned	Yes.
Whether reportable	No.