

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

Criminal Revision 2504 of 2018 (O&M)
Date of Decision: 21.8.2018

Uttam

...Petitioner

Versus

State of Haryana

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Arjun Lakhanpal, Advocate
for the petitioner.

Ms. Priyanka Sadar, AAG, Haryana.

JAISHREE THAKUR, J.

Learned counsel for the petitioner has filed an application for placing on record an affidavit of the maternal uncle of the petitioner as Annexure P/2 in Court today.

The application is allowed and the affidavit is taken on record.

Registry to number the application.

Main case

1. This is a revision that has been filed seeking to challenge the order dated 9.7.2018 passed by the Principal Magistrate Juvenile Justice Board, Hisar, declining bail to the petitioner as well as the order passed by the Additional Sessions Judge, Hisar, affirming the said order in appeal.

2. In brief, the facts are that an FIR was registered on the basis of a statement of Vinod Kumar son of Deep Chand Sharma, on the allegations that on 4.7.2018 at about 6 p.m., Uttam son of Rajpal (petitioner herein) came to his house and enticed his son Yash to come out on the pretext of

flying a kite, where he committed carnal intercourse with his son. His son narrated the incident to him, which led to the registration of the FIR under Section 377 IPC and Section 4 of the Protection of Children From Sexual Offences Act, 2012. The petitioner was arrested on 5.7.2018. The application was dismissed by the Principal Magistrate Juvenile Justice Board, Hisar, on the ground that if the juvenile, being in conflict with law, Hisar, is released on bail, he may pressurize the prosecution witnesses, which may frustrate the interest of justice and the said order was affirmed in the appeal.

3. Learned counsel appearing on behalf of the petitioner contends that both the orders passed by the courts below are not sustainable, in view of Section 12 of the Juvenile Justice Act, 2015, while further arguing that the petitioner has been falsely implicated in the case. It is contended that by virtue section 12 of the Juvenile Justice Act, a 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. It is also argued that Social Investigation Report does not suggest that in case the petitioner is released on bail, it would bring him in association with known criminals or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice.

4. Per contra, learned counsel appearing on behalf of the respondent—State opposes the grant of bail on the ground that the petitioner herein is residing in the same vicinity as that of the victim, while also arguing that his release would bring him in association with known criminals and would expose him to moral, physical or psychological danger.

5. I have heard learned counsel for the parties and perused Section 12 of the Juvenile Justice Act, 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.

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 be exposed to moral, physical or psychological danger or that his release would defeat the ends of Justice.

6. The law in this regard is well settled. 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.’’

7. Both the impugned orders do not reflect as to how the petitioner herein would be put in a moral, physical or psychological danger on his release or that his release would defeat the ends of justice. As argued by the learned counsel for the petitioner, there is nothing on record to suggest the same. The only argument that has been raised by the learned counsel appearing for the respondent—State is that the minor victim resides in the neighbourhood of the petitioner and therefore, there is every possibility of the minor being intimated/threatened or influenced and face a degree of embarrassment in case the petitioner is released on bail.

8. In order to allay the apprehension expressed by the learned counsel for the State, learned counsel for the petitioner contended that the juvenile in conflict with law on his release would reside with his maternal uncle, namely, Kuldeep Singh, resident of Gali No.11, Tibba Danesher Hisar. A statement to this effect was also made by Kuldeep Singh in court on 20.8.2018, when he was present in Court. Therefore, this Court directed him to file an affidavit, which, as already noticed, has been filed today and the same is taken on record.

9. As per the affidavit furnished, Kuldeep Singh, maternal uncle has stated that he is ready and willing to keep the petitioner with him at his residence and would comply with the terms and conditions imposed by this Court.

10. For the reasons afore-stated and taking into consideration the affidavit filed by Kuldeep Singh, maternal uncle of the petitioner, and Section 12 of the Juvenile Justice Act, which makes it obligatory for the bail to be granted to the juvenile in conflict with law, the present revision is allowed. The petitioner be released on bail subject to furnishing bail bonds to the satisfaction of the Principal Magistrate Juvenile Justice Board/Duty Magistrate, Hisar.

11. The revision allowed on the aforesaid terms.

21.8.2018
prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No