

Crl. Misc. No. M-61558 of 2018

(1)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Misc. No. M-61558 of 2018

DATE OF DECISION:20.03.2019

Rohit

.....Petitioner

Versus

State of Haryana

.....Respondent

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Aditya Yadav, Advocate
for the petitioner.

Mr. Tanuj Sharma, AAG, Haryana.

DAYA CHAUDHARY, J.

Petitioner-Rohit, who is confined in Observation Home, Hisar being juvenile has filed the present petition under Section 439 Cr.P.C. for grant of regular bail in case FIR No. 402 dated 22.4.2016 registered under Sections 302,201,120-B,34 IPC and 25/54/59 of Arms Act at Police Station Civil Line, Rohtak.

Earlier the petition for grant of bail was filed before Additional Sessions Judge, Rohtak, which was dismissed vide order dated 29.9.2018 on the ground that there is every likelihood of the petitioner of misusing concession of bail in case the same is granted to him.

Learned counsel for the petitioner contends that name of the petitioner was neither mentioned in the FIR nor any specific role was attributed to him. No identification parade was conducted and for the first

time the petitioner was identified by the witnesses in the Court. The petitioner being juvenile has falsely been implicated in the case only on the basis of disclosure statement made by co-accused, which has no evidentiary value. The petitioner is in custody since 23.4.2016. Learned counsel further contends that initially three accused were there but after recording the statement of eye witness-Raj Kumar under Section 161 Cr.P.C., six persons were named including the petitioner. Learned counsel also contends that as per provisions of Section 12 of Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as 'the Act, ,2015'), the petitioner is entitled to bail as a matter of right but still his case for grant of bail has not been considered by learned Additional Sessions Judge.

Learned counsel for respondent-State has opposed grant of bail to the petitioner on the ground that co-accused, namely, Virender @ Binder, Anil and Deepak Kochar have approached this Court by way of filing different petitions and after arguments those petitions were dismissed as withdrawn. Learned State counsel also submits that regular bail petition filed by the petitioner is neither maintainable before this Court nor before learned Additional Sessions Judge and wrong remedy has been availed.

Heard the arguments advanced by learned counsel for the parties and have also gone through the contents of the FIR and other documents available on the file.

Sections 12 of the Act, 2015 is relevant for resolving the controversy in hand and the same is reproduced 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 appears 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 in-charge 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 inquiry regarding him as may be specified in the order."

If the statutory mandate in relation to grant of bail to juvenile is to be seen, bail in such a case of juvenile in conflict with law, is a general rule, whereas, refusal is exception but such refusal has also to be in consonance with the grounds mentioned in Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to

as 'the Act, 2000). The seriousness of the offence is no ground to reject the bail. However, from the provisions of the Act as well as from the various judgments, it is clear that bail to the juvenile can be denied if there appears reasonable grounds for believing that the release is likely to bring juvenile into association with any known criminal or expose him to moral, physical or psychological danger or his release would defeat the ends of justice. The offences like rape with child followed by murder, anti national/sedition, drug trafficking and other similar acts are the offences which reflect the criminal mind set of the offenders and as such any discretion under Section 12 of the Act, 2015 to such a person would amount to defeating the ends of justice. Granting bail to such a juvenile will not only expose him to moral, physical and psychological danger but would also lead to defeat of the ends of justice as has been observed by Allahabad High Court in the case of **Mohd. Shakil Khan Vs. State of U.P.** 2017 (2) All. Crl. Rulings 2266.

The issue before this Court is as to whether the learned Additional Sessions Judge, Rohtak was having jurisdiction to deal with the application for bail under Section 439 Cr.P.C on parameters other than those mandated by Section 12 (1) of the Act, 2000, which has been replaced by the Act, 2015.

Bearing in mind the statement of objects and reasons of the Act, a look at the provisions of Section 9 is of great importance, so far as the issue of the jurisdiction of a Court to deal with any matter relating to a child in conflict with the law is concerned, be it trial or bail or any incidental matter. The provisions of Section 9 of the Act, 2015 are reproduced as under:-

"9 - Procedure to be followed by a Magistrate who has not

been empowered under this Act. - (1) When a Magistrate, not empowered to exercise the powers of the Board under this Act is of the opinion that the person alleged to have committed the offence and brought before him is a child, he shall, without any delay, record such opinion and forward the child immediately along with the record of such proceedings to the Board having jurisdiction.

(2) In case a person alleged to have committed an offence claims before a court other than a Board, that the person is a child or was a child on the date of commission of the offence, or if the court itself is of the opinion that the person was a child on the date of commission of the offence, the said court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) to determine the age of such person, and shall record a finding on the matter, stating the age of the person as nearly as may be:

Provided that such a claim may be raised before any court and it shall be recognised at any stage, even after final disposal of the case, and such a claim shall be determined in accordance with the provisions contained in this Act and the rules made thereunder even if the person has ceased to be a child on or before the date of commencement of this Act.

(3) If the court finds that a person has committed an offence and was a child on the date of commission of such offence, it shall forward the child to the Board for passing appropriate orders and the sentence, if any, passed by the court shall be

deemed to have no effect.

(4) In case a person under this section is required to be kept in protective custody, while the person's claim of being a child is being inquired into, such person may be placed, in the intervening period in a place of safety."

(Emphasis by Court)

A reading of provisions of Section 9, in particular, Sections 9 (1), 9 (2) and 9 (3) leaves no room for doubt that once an accused is held to be a child in conflict with law, at any stage of proceedings, even after final disposal of the case before any Court, the child along with record of the proceeding have to be transmitted to the Board having jurisdiction, and, in case of a Court that has found that the accused has committed an offence, and, thereafter adjudges him/her to be a child in conflict with law, shall forward such child to the Board for appropriate orders and the sentence, if any, passed by the Court shall be deemed to have no effect.

Such being the legal position, if any bail application filed by a juvenile is entertained by the High Court and rejected, certainly, the juvenile would be left with no option, since he would have been deprived of the right of appeal before the Court of Sessions and Revision before the High Court. In fact, no provision in the Act or in the Code of Criminal Procedure enables the juvenile to move an application for anticipatory bail either before the Court of Sessions or High Court or even before the Board, which has been exclusively constituted for the purpose of dealing with the proceedings pertaining to a juvenile. Aforesaid view has been taken by Allahabad High in the case of **Yash Anand @ Iddu (Minor) Vs. State of U.P. and another** (Crl. Revn. No. 3283 of 2017, decided on 14.8.2018).

In the present case, bail application has been dismissed without taking into consideration the provisions of the Act, 2015 and has also not been dealt with at all in the manner prescribed under the law applicable to the case of juvenile, which in the first instance is the Juvenile Justice Board. It would not at all be appropriate for this Court to assume jurisdiction over proceedings which are held to be taken by the court below without jurisdiction. This Court for the same reason too would have no jurisdiction to deal with the present petition as the same has been filed after dismissal of the bail application by learned Additional Sessions Judge, Rohtak.

Accordingly, order dated 29.9.2018 passed by learned Additional Sessions Judge, Rohtak is held to be nullity with a direction to the petitioner to approach the Juvenile Justice Board by moving an appropriate application for bail. In case such an application is moved by the petitioner, the same is directed to be dealt with and disposed of by the concerned Board within a period of two weeks from the date of moving of an application.

March 20, 2019
pooja

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes