

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

CRR-725-2019 (O&M)

Date of Decision: January 08, 2020

Kishan Kumar

... Petitioner

VERSUS

State of Haryana

... Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present Mr. Vishal Goel, Advocate
 for the petitioner.

Ms. Trishanjali Chopra, Asst. A.G., Haryana.

JAISHREE THAKUR, J.(Oral)

The present revision petition has been filed to challenge the impugned order dated 13.06.2018 passed by the Juvenile Justice Board, Jagadhri, whereby, the bail to the present petitioner-Kishan Kumar aged 16 years, who has already been declared juvenile, has been declined and the same has been affirmed by Additional Sessions Judge, Yamuna Nagar at Jagadhri vide judgment dated 04.10.2018. The petitioner, being juvenile, has prayed for setting aside the impugned orders passed by both the Courts below.

The case of the petitioner is that he was arrested in FIR No.116 dated 09.03.2018 registered under Sections 364, 506 IPC and Section 6 of the POCSO Act, 2012 at Police Station Yamuna Nagar City, District Yamuna Nagar. He moved an application for grant of bail before Juvenile Justice Board being Juvenile but the same was dismissed. The appeal preferred by him before the Additional Sessions Judge, Yamuna Nagar at Jagadhri was also dismissed.

Learned counsel for the petitioner submits that the bail application of

the petitioner has been dismissed by both the Courts below only on the ground of presumption that in case, the juvenile is released on bail, he may be exposed to moral and psychological danger and his release would defeat the ends of justice, whereas, no such finding was recorded as to how he will come in contact with criminals and how he will be exposed to moral, physical or psychological danger, which would defeat the ends of justice. Learned counsel also submits that the petitioner was a regular student of 10th standard and is not a previous convict and he is not associated in any kind of un-social or criminal activities. Nothing has been brought on record to show that the petitioner is having any criminal background or any criminal case has been registered against any of his family member.

Learned counsel for the petitioner has also relied upon the judgment of the Co-ordinate Bench in case ***Gaurav vs. State of Haryana, 2016 (5) RCR (Criminal) 781*** as well as judgment of this Court in case of Naveen (minor) vs. State of Haryana, CRR-2485-2018 decided on 27.09.2018 in support of his arguments.

Learned counsel for the respondent-State opposes grant of bail to the petitioner on the ground of heinousness and seriousness of offence and also because of the fact that the victim was minor at the time of occurrence.

I have heard learned counsel for the parties and have also perused the impugned orders as well as the allegations levelled in the FIR.

Admittedly, as per allegations levelled in the complaint, the FIR, in question, was registered against the petitioner. The petitioner was tried by Juvenile Justice Board, where, he moved an application for grant of bail, being juvenile, which was dismissed. Thereafter, an appeal filed against the said order before the Additional Sessions Judge, Yamuna Nagar was also dismissed. The petitioner has been declined bail on the ground that in case, he is released on bail, his release

would defeat the ends of justice which would bring him in association with known criminals and expose him to moral, physical and psychological danger.

Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (here-in-after referred to as `Act') is relevant in the present controversy, which 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 1 [or placed under the supervision of a Probation Officer or under the care of any fit institution of 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.”

From the bare reading of the provisions of Section 12 of the Act, it appears that the intention of the legislature is to grant bail to the juvenile irrespective of the nature or gravity of the offence, alleged to have been committed by him and the same can be declined only in case where reasonable grounds are

there for believing that the release is likely to bring him into the association of any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice.

Meaning thereby, as per aforesaid provision, a juvenile can be denied the concession of bail, if any of the three contingencies specified under Section 12 (1) of the Act is available.

Vide order dated 13.06.2018 passed by the President, Juvenile Justice Board, Jagadhri, the bail application of the petitioner has been declined on the ground that it would expose him to moral and psychological danger and it would also defeat the ends of justice but no material was available on record to show as to how it would defeat the ends of justice.

Similarly, the appeal filed against the said order has also been dismissed on the ground that it would defeat the ends of justice.

In the present case, while declining the bail application, the relevant provision has not been considered by both the Courts below as in accordance with Section 12 of the Act, 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 specified under Section 12(1) of the Act was existing.

Similar view was observed in cases ***Manoj Singh vs State of Rajasthan 2004(2) RCC 995***, ***Lal Chand v.State of Rajasthan 2006(1) RCC 167***, ***Prakash v. State of Rajasthan 2006(2) RCR (Criminal) 530*** and ***Udaibhan Singh alias Bablu Singh v. State of Rajasthan 2005(4) Crimes 649***.

Learned counsel for the respondent-State has also not pointed out any material available on record to show that there are reasonable grounds for believing that the petitioner is likely to come into the association of any known criminal if released on bail or his release will expose him to moral, physical or

psychological danger. Petitioner is in custody since the date of filing of the FIR i.e. 09.03.2018 and no purpose will be served, in case, he is kept in custody.

In view of the totality of the facts and circumstances of the case and law position as discussed above, I am of the view that both the Courts below have not satisfied the requirement of provisions of Section 12(1) of the Act and without having any material on record, the bail application of the petitioner has been declined. The impugned orders are not sustainable in the eyes of law and as such, are liable to be set aside.

Accordingly, the present revision petition is allowed and the impugned orders i.e order dated 13.06.2018 passed by the Juvenile Justice Board, Jagadhri, and order dated 04.10.2018 passed by the Additional Sessions Judge, Yamuna Nagar at Jagadhri are hereby set aside. The petitioner is directed to be released on bail subject to his furnishing adequate bail bond/surety bonds amounting to ₹2 lacs through his natural guardian or near relative to the satisfaction of the Principal Magistrate, Juvenile Justice Board, Jagadhri.

January 08, 2020

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**(JAISHREE THAKUR)
JUDGE**

Whether speaking/reasoned
Whether reportable

Yes.
No.