

205-A

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

CRR-882-2020(O&M)

Date of Decision: 07.10.2020

Deepak(Minor)

..... Petitioner

versus

State of UT, Chandigarh

..... Respondent

CORAM : HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present: Mr. Rana Gurtej Singh, Advocate for the petitioner.

Mr.Kuldeep Tiwari, APP, UT, Chandigarh.

TEJINDER SINGH DHINDSA, J. (ORAL)

This case has been taken up through Video Conferencing via Webex facility in the light of Pandemic Covid-19 situation and as per instructions.

The instant revision petition is directed against the order dated 23.03.2020 passed by the learned Additional Sessions Judge, Chandigarh whereby the appeal filed by the petitioner against the order dated 18.02.2020 passed by the Principal Magistrate, Juvenile Justice Board, Chandigarh declining the bail application of the petitioner has been affirmed.

Undisputedly FIR No.0039 dated 22.01.2018, under Sections 392, 397, 411 of the IPC and Sections 25, 54, 59 of the Arms Act was registered at Police Station Sector 39, Chandigarh on the complaint of one Dhirender Ray on the allegations that on 22.01.2018 when he was crossing the Sector 25/38 light point an Indica car stopped and three persons stepped

out of the car while one kept sitting inside and by putting a *Desi Katta* on the head of the complainant Rs.5000/- along with a mobile phone were snatched. Further allegations are that money and mobile even from an accompanying friend were thereafter snatched. FIR was registered against 'unknown persons'.

As per case of the prosecution after about two years of the registration of the FIR, police received secret information that the persons who had committed the crime are going to pass through a specific location to attend a wedding and if a *Naka* is set up they can be apprehended. Petitioner is stated to have been apprehended on 11.01.2020 along with the other accused and as per prosecution version a dummy pistol was recovered from him.

Petitioner admittedly is a juvenile. The bail application preferred by the petitioner has been declined by the Principal Magistrate, Juvenile Justice Board, Chandigarh vide order dated 18.02.2020 in terms of taking a view that the offences committed by him are serious in nature and there is a strong apprehension that if he be granted bail he would be exposed to moral, physical or psychological danger. Such reasoning would be apparent from the order dated 18.02.2020 itself which has been appended along with the instant revision petition.

The appeal preferred by the petitioner has been dismissed by the learned Additional Sessions Judge, Chandigarh vide order dated 23.03.2020 and the operative part thereof reads in the following terms:-

“ *The applicant/juvenile has been arrested in the present FIR along with other co-accused. He is also arrested in another robbery case as per record. The apprehension of prosecution that applicant may repeat the offence seems genuine at this*

stage. Considering all the facts, without commenting on the merits of the case, the bail application is dismissed. File be consigned to record room.”

Having heard counsel for the parties at length I am of the considered view that the present revision petition deserves acceptance.

Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2000 reads as under:-

“ 12. Bail of juvenile – (1) When any person accused of a bailable of 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 provisions reproduced herein above

would make it apparent that an exception has been carved out for declining the bail to the juvenile who is in conflict with law i.e. he or she is likely to come in association with any known criminal or upon release on bail would expose such juvenile to moral, physical or psychological danger or that release of the juvenile would defeat the ends of justice. For invoking such exception, there has to be some material before the competent authority on the basis of which, it can be held that the release of the juvenile in the present case would fall within the exception recognised under Section 12. The impugned order dated 23.03.2020 passed by the Additional Sessions Judge, Chandigarh is completely bereft of any such reasoning. No such material/evidence has been adverted to in the order.

Even as regards the order dated 18.02.2020 passed by the Principal Magistrate, Juvenile Justice Board, Chandigarh is concerned, the reasoning furnished thereunder would be untenable. Seriousness of the offence as mentioned in the FIR would not be a ground to deny to the juvenile the concession of bail in the light of Section 12 of the Act.

It would be useful to refer to the judgment passed by a coordinate bench of this Court in **Atul Kumar and another Vs. State of Haryana, 2003(4) RCR (Criminal) 404**, wherein Section 12 of the Act has been considered. Even in the facts in Atul Kumar's case (supra) the offence attributed to the juvenile was under sections 302, 323, 147 and 149 I.P.C and while holding the juvenile therein to be entitled to the concession of bail, it was held as follows:-

“I am further of the view that there has to be some evidence on record showing that after the release on bail, the petitioners are likely to come in association with any known criminal or their release on bail would expose them to moral, physical or psychological danger or that their release would

defeat the ends of justice. In a given case if the parents of the petitioners are also criminals either ex-convicts or members of a gang, it may be possible for the Court to refuse bail. Another example could be whether the petitioners have repeated the crime showing lapse on the part of the parents after their release while on bail, then the case may be covered by the exceptions carved out under Section 12 of the Act. However, in a case like the one in hand, where no material has been placed on record to show that the release of the 'juvenile in conflict with law' would defeat the ends of justice or any other exception, the petitioners cannot be denied the benefit of bail merely on the basis of conjectures or opinion formed by the prosecution or the Court. Reliance in this regard could be placed on the judgments in the case of Sahabuddin @ Shabboo's case (supra) and Sanjeev Kumar's case (supra)."

By following the dictum laid down herein above, instant revision petition is allowed. The impugned orders of both the Courts below are set aside. Petitioner is held entitled to grant of bail under Section 12 of the Act. Accordingly it is directed that the petitioner be released on bail subject to furnishing bail bonds to the satisfaction of the Chief Judicial Magistrate/Duty Magistrate, Chandigarh.

Petition is allowed in the aforesaid terms.

(TEJINDER SINGH DHINDSA)
JUDGE

07.10.2020
sunita

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No