

205 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-879-2020(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.474 dated 31.12.2019, under Sections 380, 457, 411 of the IPC was registered at Police Station Sector 39, Chandigarh on the complaint of one Jaswinder Kaur. Complainant asserted that she runs a Vita Milk Booth in A.G.Colony, Sector 41-A, Chandigarh on partnership basis and on 31.12.2019 she had closed her booth at 6.30 p.m.

Allegations are that when she visited the booth thereafter she noticed that

some unknown persons had broken the locks of the booth and stolen 64 Kilograms *Desi Ghee* along with coins amounting to Rs.3000/-, some chocolates and Rs. 2000/- from the cash box. FIR as such was registered against 'unknown persons'. Present petitioner stands implicated in the present case on the basis of a disclosure statement which he allegedly got recorded with the police under Section 27 of the Indian Evidence Act, 1872 upon having been apprehended in another FIR bearing No.0039 dated 22.01.2018, under Section 392 IPC and Sections 25/54/59 of Arms Act, registered at the same police station i.e. Sector 39, Chandigarh.

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 by voicing an apprehension that if bail were to be granted it would expose the juvenile 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:-

“ Keeping in view the contents mentioned in the bail application and reply filed by APP, this Court is not inclined to grant the bail of juvenile being offence committed serious in nature and one another case is registered. Hence, the bail application is dismissed. File be attached with the remand papers.”

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 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 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	Yes/No
Whether Reportable	Yes/No