IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRR-962-2020(O&M)
Date of Decision: 02.07.2020

Sanjit --Petitioner

Versus

State of Haryana --Respondent

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

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

Mr. Saurabh Mohunta, D.A.G., Haryana.

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TEJINDER SINGH DHINDSA.J (Oral)

Matter has been taken up through video conferencing via Webex facility in the light of the Pandemic Covid-19 situation and as per instructions.

CRM-14701-2020

Application is allowed as prayed for.

The accompanying order dated 8.4.2020 passed by the Principal Magistrate, Juvenile Justice Board, Rohtak is taken on record as Annexure P-9.

Main Petition

The instant revision petition is directed against the order dated 13.5.2020 passed by the learned Addl. Sessions Judge, Rohtak (Annexure P-1) whereby the appeal filed by the petitioner against the order dated 8.4.2020 passed by the Principal Magistrate, Juvenile Justice Board, Rohtak declining the bail application of the petitioner, has been affirmed.

Undisputedly, the FIR No.0096 dated 12.3.2020 under sections 365, 376-D, 506 I.P.C and section 25 of the Arms Act, 1959 was registered at Police Station, Meham, district Rohtak in which the present petitioner

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stands cited as an accused.

The petitioner admittedly was a juvenile on the date of the alleged occurrence.

The bail application preferred by the petitioner has been declined by the Principal Magistrate, Juvenile Justice Board, Rohtak on the reasoning that if he is released on bail at this stage he may pressurize the prosecutrix as the both belong to the same village and further the petitioner is involved in another case for commission of offence under Section 307 I.P.C.

The appeal preferred by the petitioner has been dismissed by the Addl. Sessions Judge, Rohtak vide impugned order dated 13.5.2020 taking a view that his release is likely to bring him in association with other criminals with whom he was previously associated and will thereby expose him to moral, physical and psychological danger. That apart, the Appellate Court has been swayed by the seriousness of the offence.

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 (herein after to be referred to as the Act) 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 of1974) 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*

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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 provision reproduced herein 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 recognized under Section 12 of the Act. The impugned order dated 13.5.2020 passed by the Appellate Court at Annexure P-1 is completely bereft of any such reasoning. No such material/evidence has been adverted to in the order. 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.

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It would be useful to refer to the judgement 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 observed 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 exconvicts 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)."*

Even on merits, this Court would be constrained in making certain observations that the prosecution version is highly doubtful. Such observations, however, are being made only in the context of considering the prayer of the petitioner for grant of bail and would have no merits on the

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trial.

It may be noticed that petitioner was earlier involved in an FIR No.37 dated 5.2.2020 for offence under Section 307 I.P.C and at the hands of Krishan son of Umed Singh i.e. father of the prosecutrix. Petitioner was granted concession of bail in such FIR on 28.2.2020. The instant FIR has seen the light of the day on 12.3.2020 pursuant to a complaint made by the Prosecutrix i.e. daughter of Krishan son of Umed Singh, who was complainant in the previous FIR. As per prosecution version, it is a case of gang rape. The first occurrence having taken place in the month of October, 2019 in a hotel, wherein the role assigned to the present petitioner is that he stood guard outside the room while co-accused namely Tarun had violated the modesty of the prosecutrix. The second occurrence is stated to have taken place in December, 2019 and the third in February, 2020. No plausible justification is coming forth as regards the inordinate delay of almost five months in having registered a complaint after the first alleged occurrence in October, 2019.

That apart, the Manager of the hotel where the first occurrence allegedly took place in October, 2019 got recorded a statement under Section 161 Cr.P.C and which is at variance with the prosecution version.

It has also gone uncontroverted that the prosecutrix has refused to get herself medically examined.

In an overview of the matter, the petitioner is held entitled to the grant of bail.

For the reasons stated above, instant revision petition is allowed. The impugned orders of both the courts below are set aside.

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It is directed that petitioner be released on bail subject to furnishing bail bonds to the satisfaction of CJM/Duty Magistrate, Rohtak.

It is again reiterated that the observations made in this order are confined only as regards considering the prayer for bail of the petitioner and would have no bearing on the merits of the trial.

Revision petition is allowed in the aforesaid terms.

(TEJINDER SINGH DHINDSA)
JUDGE

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Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No

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