

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRR-1102-2020(O&M)
Date of Decision: 01.09.2020

Rahul Badhgujjar

--Petitioner

Versus

State of Punjab

--Respondent

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

Present:- Mr. Himanshu Rao, Advocate for the petitioner.

Mr. A.S. Sandhu, Addl. A.G., Punjab.

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.

The instant revision petition is directed against the order dated 30.7.2020 passed by the learned Additional Sessions Judge, Sangrur whereby the appeal filed by the petitioner against the order dated 7.7.2020 passed by the Principal Magistrate, Juvenile Justice Board, Sangrur declining the bail application of the petitioner has been affirmed.

Counsel for the parties have been heard at length.

Undisputedly, FIR No.17 dated 10.2.2020 under sections 363, 366-A I.P.C was registered at Police Station, Khanauri in which petitioner has been cited as an accused. The case had been lodged on the statement of Saroj Devi i.e. mother of the victim. It was alleged that husband of the complainant had already died. Elder daughter, who is the alleged victim was aged 14 years. On 7.2.2020 at about 8/8.30 P.M after having the evening meal the complainant along with her children had slept in the room.

On 8.2.2020 at about 4 A.M she woke up but found the victim missing. After inquiry she came to know that the present petitioner had enticed the victim away on the pretext of marrying her.

Petitioner admittedly is a juvenile. The bail application preferred by the petitioner has been declined by the Principal Magistrate, Juvenile Justice Board, Sangrur vide order dated 7.7.2020 in terms of taking a view that the allegations against the juvenile are serious and the offence committed is heinous in nature.

Such sole reasoning would be apparent from the order dated 7.7.2020 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 (Children Court), Sangrur vide impugned order dated 30.7.2020. The operative portion of the order reads in the following terms:-

“12. Heinous crimes against women/girl children are crimes against society. The society feeling desperate and outraged, too needs justice, which has to be ensured to both author vis-a-vis victim and society. Though Section 12 of the Act empowers court to grant bail to juvenile, it specifically puts a rider which is couched in negative. Court would be failing in its duty in not giving due weightage to the above caveat. The aim of the Act is to take care of both child in conflict with law as well as child who need care and protection. As such, Section 12 of the Act cannot be interpreted in a manner so as to give advantage to only juvenile in conflict with law ignoring the need or welfare of the victim child. By showing misplaced sympathy to juvenile, who has perpetrated offence like rape, victim (child) and the society is denied justice which is not and cannot be the intention of law.

13. *In view of the observations aforesaid, the Court is of the opinion that while dismissing the bail application of the juvenile in the instant case, no error has been committed by the learned PMJJB, Sangrur. Consequently, the appeal being without any merit is hereby dismissed. Trial Court record, if any, along with copy of this judgement be sent back. The appeal file be consigned to the Record Room, Sangrur.”*

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 [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 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 30.7.2020 passed by the Additional Sessions Judge, Sangrur is completely bereft of any such reasoning. No such material/evidence has been adverted to in the order.

Even as regards the order dated 7.7.2020 passed by the Principal Magistrate, Juvenile Justice Board, Sangrur 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)."

For the reasons stated above, the 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 CJM/Duty Magistrate, Sangrur.

Petition is allowed in the aforesaid terms.

(TEJINDER SINGH DHINDSA)
JUDGE

01.09.2020

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