

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

118

Crl. Rev. No. 1088 of 2020

Date of Decision:- 26.08.2020

Indal

....Petitioner

vs.

State of Haryana

....Respondent

BEFORE :- HON'BLE MR. JUSTICE SUDHIR MITTAL

Present:- Mr. Karamveer Singh Banyana, Advocate,
for the petitioner.

Mr. Munish Sharma, AAG, Haryana.

Sudhir Mittal, J. (Oral)

The petitioner is an accused in FIR No118 dated to 31.01.2020 registered at Police Station City Thanesar, District Kurukshetra, under Section 377 of the Indian Penal Code, 1860 and Section 6 of the Protection of Children from Sexual Offences (POCSO) Act, 2012. The petitioner allegedly performed unnatural sex with the 5 years old son of his landlord. The petitioner is a juvenile aged about 15 years.

Learned counsel for the petitioner argues that Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as 'the 2015 Act') grants an absolute right to a minor in conflict with law to be released on bail unless there is credible evidence available on record that his release on bail is likely to result in contact with criminals or the accused is likely to be subjected to mental, physical or psychological danger or his release would defeat the ends of justice. There is no such evidence available on the record and, thus, the courts below have erred in rejecting the application of the petitioner for grant of regular bail. The petitioner has been in custody since 1.2.2020 and examination of witnesses has yet not commenced. Thus, the petitioner deserves to be released on regular bail. He relies upon judgement dated 17.07.2020 passed in Criminal

Revision No.977 of 2020 titled as *Vijay Kumar versus State of Punjab*.

Learned State counsel concedes that the petitioner has been in custody since 01.02.2020 and that examination of prosecution witnesses has yet not commenced. However, he opposes the prayer for bail on the ground that the petitioner has committed a heinous offence. Medical evidence regarding the act is available on the record and thus, the release of the petitioner would definitely defeat the ends of justice.

A perusal of order dated 11.4.2020 passed by the Principal Magistrate, Juvenile Justice Board, Kurukshetra shows that the Court rejected the application for bail on the ground that the petitioner may try to prevail over the victim and that his release would expose him to moral, physical and psychological danger. However, the aforementioned observations are not based on any material available on the record. Moreover, it is difficult to understand how the case would be adversely affected even if the petitioner manages to prevail over the minor child, once there is medical evidence of the offence available on the record. The learned Additional Sessions Judge, Kurukshetra has only repeated the observations of the trial Court in his order dated 8.5.2020. Thus, his order also suffers from the infirmities pointed out here-in-before.

In *Vijay Kumar (supra)*, this Court has held as follows: –

“A perusal of Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short of 'the Act') leaves no manner of doubt that a juvenile is entitled to bail as a matter of right. This right can be curtailed only if, the case of a juvenile falls within the exceptions mentioned in the proviso to Section 12 of the Act. For a

case to fall within the exceptions, there must be sufficient credible evidence available on the record. This evidence could be in the nature of statements recorded under Section 161 Cr.P.C. or a report of the investigating agency or such other similar evidence. This is not to say that there must be hard evidence available regarding existence of any of the exceptions as such hard evidence cannot be expected at an early stage. However, the evidence available should be such as to convince a judicial mind regarding the existence of any of the exceptions.”

Thus, for a case to fall within the exceptions to Section 12 of the Act, credible material should be available for a Court to record a finding.

The impugned orders have been passed on the basis of the perceived notions of the Courts below and are not based on credible material. Thus, they cannot survive judicial scrutiny and deserve to be set aside. The petition is allowed and orders dated 08.05.2020, 10.04.2020 and 11.04.2020 are set aside. It is directed that the petitioner be released on bail on his furnishing bail and surety bonds to the satisfaction of the Juvenile Justice Board/Duty Magistrate concerned.

August 26, 2020
poonam

(SUDHIR MITTAL)
JUDGE

Whether Speaking/Reasoned

Yes

Whether Reportable

No