

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

CRR No.1119 of 2020 (O&M)
DATE OF DECISION: 14.09.2020

NamanPetitioner

versus

State of HaryanaRespondent

CORAM:- HON'BLE MRS. JUSTICE ALKA SARIN

Present: Ms. Priyanka Mishra, Advocate for
Mr. Akshit Aggarwal, Advocate for the petitioner

Ms. Dimple Jain, Assistant Advocate General, Haryana

..

ALKA SARIN, J.:

Heard through video conferencing.

The present revision petition has been filed by a juvenile in conflict with law challenging the order dated 20.12.2019 passed by the Principal Magistrate, Juvenile Justice Board, Yamuna Nagar at Jagadhri and the order dated 13.01.2020 passed by the Additional Sessions Judge, Yamuna Nagar at Jagadhri vide which his appeal filed against the order dated 20.12.2019 was dismissed.

In brief, the allegations are that on 24.07.2019, the complainant, mother of the Prosecutrix, filed a complaint alleging that she

has three children. Her younger daughter, the Prosecutrix, is 7 years old. She is a labourer by profession and leaves the house in the morning and returns in the evening. On 24.07.2019, when she returned home, the daughter of her brother-in-law (Jeth) informed her that yesterday i.e. on 23.07.2019, at around 9.00 p.m., when she went to the roof of the house she saw that the juvenile in conflict with law had taken off his pants and there were no clothes on the body of the Prosecutrix and he was lying on top of her. The private part of the juvenile in conflict with law was touching the private part of the Prosecutrix and he was forcibly committing a wrong act with her. It is further stated in the complaint that when she enquired from her daughter she disclosed about the same incident. On the basis of the complaint, FIR No.142 dated 24.07.2019 was registered under Section 376-AB of the Indian Penal Code, 1860 (IPC) and Section 6 of the Protection of Children from Sexual Offences Act, 2012 at Police Station Bilaspur, Yamuna Nagar. The juvenile in conflict has been in custody since 25.07.2019.

Learned counsel for the petitioner has referred to Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short, “Juvenile Justice Act”) to contend that the petitioner being a juvenile was entitled to bail as a matter of right. It has further been contended that nothing incriminating has been found against the petitioner in the MLR as well as in the FSL report. The learned counsel for the petitioner has relied upon the order passed by the Apex Court in ***Re Exploitation of Children in Orphanages in the State of Tamil Nadu vs Union of India, 2020(1) RCR (Criminal) 1022***, in support of her argument that once a child is produced before the Juvenile Justice Board, bail is the rule.

Per contra, the learned counsel for the State has contended that keeping in mind the gravity of the offence and the fact that the victim is a minor, this is not a fit case for grant of bail to the petitioner.

I have heard the learned counsel for the parties and have perused the impugned order as well as the allegations in the FIR.

There is no dispute to the fact that the petitioner in the present case is a juvenile. The petitioner moved an application for grant of bail being a juvenile before the Juvenile Justice Board which was dismissed and thereafter the appeal filed against the said order before the Additional Sessions Judge, Yamuna Nagar was also dismissed. The bail has been denied to the petitioner on the ground that the juvenile in conflict with law shall be exposed to moral, physical and psychological danger if he is released from the protective custody and that there are reasonable grounds for believing that his release is likely to bring him in association with known criminals.

Section 12 of the Juvenile Justice Act reads as under :

“12. Bail to a person who is apparently a child alleged to be in conflict with law.—(1) When any person, who is apparently a child and is alleged to have committed a bailable or non-bailable offence, is apprehended or detained by the police or appears or 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 person:

Provided that such person shall not be so released if there appears reasonable grounds for believing that the release is likely to bring that person into association with any known criminal or expose the said person to moral, physical or psychological danger or the person's release would defeat the ends of justice, and the Board shall record the reasons for denying the bail and circumstances that led to such a decision.

(2) When such person having been apprehended is not released on bail under sub-section (1) by the officer-in-charge of the police station, such officer shall cause the person to be kept only in an observation home in such manner as may be prescribed until the person can be brought before a Board.

(3) When such person is not released on bail under sub-section (1) by the Board, it shall make an order sending him to an observation home or a place of safety, as the case may be, for such period during the pendency of the inquiry regarding the person, as may be specified in the order.

(4) When a child in conflict with law is unable to fulfil the conditions of bail order within seven days of the bail order, such child shall be produced before the Board for modification of the conditions of bail."

A bare perusal of Section 12 of the Juvenile Justice Act makes it amply clear that bail ought to be granted to the juvenile irrespective of the nature or gravity of the offence alleged to have been committed by him and the same can only be denied on the grounds mentioned in the proviso to the Section 12(1). A reading of Section 12 of the Juvenile Justice Act reveals that a *non obstante* clause has been incorporated which reads that “*notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force*”, which makes the intention of the Legislature crystal clear that a juvenile in conflict with law has to be released on bail except for the reasons mentioned in the proviso to Section 12(1) of the Juvenile Justice Act. The refusal for bail can only be on three grounds which have been enumerated in the proviso to the Section i.e. there are reasonable grounds for believing that the release is likely to bring the person in association with any known criminals or expose the person to moral, physical or psychological danger or the person’s release would defeat the ends of justice. While denying the benefit of bail to a juvenile in conflict with law, the Court not only has to refer to one or more of these grounds mentioned in the proviso to Section 12(1) of the Juvenile Justice Act but has also to record its satisfaction based on relevant material as available on the record.

The Juvenile Justice Board, while rejecting the prayer for bail, had referred to a social investigation report wherein it was mentioned that the juvenile in conflict with law is a neglected child and is under the peer group influence and as such there is every apprehension that the release of the juvenile in conflict with law would defeat the ends of justice and that he would come in association with known and unknown criminals. The

learned counsel for the State has produced on record the custody certificate which reveals that the juvenile in conflict with law has been in custody for 1 year, 1 month and 11 days. Besides the custody certificate, no material has been placed on the record to show that any of the three conditions as mentioned in proviso to Section 12(1) of the Juvenile Justice Act for rejection of bail are being met with or are applicable to the present case. In fact, no material at all has been placed on the record for this Court to arrive at a conclusion that the release of the juvenile would bring him in association with known criminals, expose the juvenile to moral, physical or psychological danger or that his release would defeat the ends of justice. The juvenile has not been involved in any other case.

Reference may also be made to decisions by this Court in *Krishan Kumar vs State of Haryana, 2020(2) RCR (Criminal) 342; Neha vs State of Punjab, 2018(2) RCR (Criminal) 226.*

The Apex Court in the case of *Re Exploitation of Children In Orphanage In the State of Tamil Nadu (supra)* held as under :

“7. Sub-section (1) makes it absolutely clear that a child alleged to be in conflict with law should be released on bail with or without surety or placed under the supervision of a probation officer or under the care of any fit person. The only embargo created is that in case the release of the child is likely bring him into association with known criminals or expose the child to moral, physical or psychological danger or where the release of the child would defeat the ends of justice, then bail can be

denied for reasons to be recorded in writing. Even if bail is not granted, the child cannot be kept in jail or police lockup and has to be kept in an observation home or place of safety.

8. All JJBs in the country must follow the letter and spirit of the provisions of the Act. We make it clear that the JJBs are not meant to be silent spectators and pass orders only when a matter comes before them. They can take note of the factual situation if it comes to the knowledge of the JJBs that a child has been detailed in prison or police lock up. It is the duty of the JJBs to ensure that the child is immediately granted bail or sent to an observation home or a place of safety. The Act cannot be flouted by anybody, least of all the police.”

In view of the above, the impugned orders dated 20.12.2019 and 13.01.2020 are set aside and the petitioner is directed to be released on bail subject to furnishing bail/surety bonds to the satisfaction of the Principal Magistrate, Juvenile Justice Board, Jagadhri and subject to the following conditions :

- (i) The petitioner shall be placed under the supervision of the Probationary Officer, who shall file periodical reports regarding the juvenile in conflict with law before the Juvenile Justice Board;
- (ii) The father of the juvenile in conflict with law shall file an undertaking regarding the good conduct of the juvenile as also for keeping him away from associating

with criminals while he continues to be on bail in the present proceedings; and

- (iii) The petitioner and his father shall report before the Juvenile Justice Board as and when directed, without default, till the proceedings are over.

In the event of an adverse report filed against the juvenile by the Probationary Officer or on any default or violation of the conditions imposed above, it would be open to the Juvenile Justice Board to revoke the bail granted to the petitioner.

Disposed off.

(ALKA SARIN)
JUDGE

14.09.2020
parkash

<u>NOTE:</u> Whether speaking/non-speaking: Speaking Whether reportable: YES/NO
--