

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

229

CRR-469-2021

Decided on : 05.10.2021

CHILD IN CONFLICT WITH LAW

... Petitioner(s)

Versus

STATE OF HARYANA AND ANOTHER

... Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

PRESENT: Mr. Satish Chaudhary, Advocate
for the petitioner(s).

Ms. Tanushree Gupta, DAG, Haryana
assisted by SI Kamal.

Mr. Jamshed Ahmed, Advocate
for the complainant.

MANJARI NEHRU KAUL, J. (Oral)

Instant revision petition has been directed against the order dated 22nd March, 2021, passed by the learned Additional Sessions Judge, Nuh, wherein, it affirmed the order dated 02nd March, 2021 of learned Principal Magistrate, Juvenile Justice Board, Nuh, vide which, the petitioner was declined the concession of bail.

Learned counsel for the petitioner submits that the prosecutrix, who admittedly is a major was in a relationship with the petitioner (Child in conflict with law) and had accompanied him of her own accord on the date of alleged occurrence. While inviting the attention of this Court to the allegations levelled in the FIR in question, he has submitted that a highly unbelievable version had been brought-forth that the prosecutrix in the presence of her sister-in-law (Bhabi) had been dragged inside a white swift

car bearing registration No. HR-37-1530 by the petitioner and two others and thereafter, gang-raped.

Learned counsel further submits that as per the allegations levelled in the FIR, the sister-in-law of the prosecutrix had soon thereafter apprised the wife of the complainant about the alleged kidnapping, but strangely, despite the name of the petitioner having been told to the family by the sister-in-law, they kept quiet and it was only once the prosecutrix allegedly returned home after 02 days of the alleged kidnapping, they chose to report the crime to the police, after a further delay of 02 days. Learned counsel further submits that in normal circumstances any parent would not have delayed the lodging of the FIR and would have promptly reported the matter to the police, more so, when the name of one of the accused was already known to them, as also the details of the vehicle, which was used in the crime.

Learned counsel has further referred to the MLR of the prosecutrix, a copy of which has been filed and taken on record today, subject to all just exceptions. Learned counsel has submitted that the allegations of gang-rape are contrary to the findings of the Doctor, inasmuch as, neither any internal or external injury, much less, any marks of resistance were noticed by the attending Doctor. Learned counsel further submitted that the Doctor had rather categorically noted in the MLR that there was no redness, pain, oedima or tenderness present during the examination of the prosecutrix and had found the vaginal orifice to be mildly loose. He, therefore, submitted that it was discernible from the facts and circumstances, that the prosecutrix, who is a major was all along a consenting party and it was for reasons but obvious, under pressure of her

family, she had been compelled to level false allegations against the petitioner.

Still further, learned counsel has submitted that the petitioner, who is a child in conflict with law and is being tried as a juvenile, be extended the concession of bail as his further incarceration would not serve any purpose. He has also contended that his release would in no way lead to tampering of evidence, as the material witness i.e. the prosecutrix already stands examined. While referring to the report of Legal and Probation Officer, which has been filed in the Court, he submits that no adverse report has been given that there was a likelihood of he coming into contact or influence of criminals. Learned counsel submits that in the wake of the report of the Probationary Officer, his case does not fall within any of the exceptions carved out in the proviso to Section 12(1) of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for brevity, 'the JJ Act').

Learned State counsel assisted by learned counsel for the complainant, has opposed the prayer and submissions of the counsel opposite by urging that the petitioner has committed a heinous crime coupled with the fact that the prosecutrix has supported the case of the prosecution.

I have heard learned counsel for the parties and gone through the material on record as well as the report of the Legal and Probationary Officer, Nuh.

The Apex Court as well as our own Court in case **CRR No.53 of 2021**, titled as, “**Vishvas Vs. State of Punjab**”, decided on **08.02.2021**, has reiterated that the bail of a child in conflict with law should not be rejected in a mechanical and routine manner and rather, a well reasoned

order should be passed while rejecting a bail application. In short, in the wake of the various pronouncements of the Supreme Court as well as the High Courts, the gravity of the offence would not be of much consequence in deciding the bail application of a juvenile, if his case does not fall under the exceptions carved out in the proviso to Section 12(1) of the JJ Act.

Coming to the case in hand, the report of the Legal and Probation Officer, only says that the socio-economic condition of the Juvenile i.e. the petitioner is not good and during enquiry it was found that the alleged offence had been committed by him 'under the influence of his company'. Section 12(1) of the JJ Act specifies three contingencies, wherein, the concession of bail may be declined to a juvenile. However, neither the report of the Legal and Probation Officer nor the learned State counsel has been able to bring forth any such material or ground, which would persuade this Court to think otherwise and deny the petitioner the concession of bail.

As a sequel to the above discussion and in the facts and circumstances of the case, the instant revision petition is allowed and the impugned order dated 22nd March, 2021, passed by the learned Additional Sessions Judge, Nuh, and order dated 02nd March, 2021, passed by the learned Principal Magistrate, Juvenile Justice Board, Nuh, are hereby set aside.

At this stage, a prayer has been made by learned State counsel that some conditions be imposed upon the petitioner so that he does not come under the influence of anti-social elements and criminals. Taking into consideration the vulnerable age of the revisionist, this Court is in

consonance with the learned State counsel's prayer and deems it fit to enlarge him on bail subject to the satisfaction of Principal Magistrate, Juvenile Justice Board, Nuh, along with the following conditions:

- i) The parents of the petitioner shall ensure that he does not come in association with a person of criminal antecedents and is not exposed to any physical, moral and psychological danger.
- ii) The parents of the petitioner shall ensure that he is provided formal/informal education to enable him to get gainful employment in future.
- iii) The parents of the petitioner shall file an affidavit to this effect before the Principal Magistrate, Juvenile Justice Board, Nuh.
- iv) They shall take good care of the petitioner and adhere to the above mentioned conditions, failing which, the concession of bail granted to petitioner, would be liable to be cancelled.

It is, however, made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

(MANJARI NEHRU KAUL)
JUDGE

October 05, 2021

J.Ram

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