

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

**Criminal Revision No. 1340 of 2021 (O&M)
Date of Decision: 16.12.2021**

Lovepreet Singh @ Lavy

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Fariad Singh Virk, Advocate
for the petitioner.

Mr. Bhupender Beniwal, Assistant Advocate General, Punjab

SURESHWAR THAKUR, J. (ORAL)

1. The apposite application, as, preferred by the petitioner / accused, before the Principal Magistrate, Juvenile Justice Board, Patiala, seeking therein relief, of, his being released from judicial custody, where he is lodged, for his allegedly committing an offence, punishable under Section 22 of the NDPS Act, in case FIR No. 92 of 09.06.2020, stood rejected, by the aforesaid on 29.07.2020, and, in an appeal preferred therefrom, before the learned Additional Sessions Judge, Patiala, the latter, also declined relief to the bail applicant, through an order made on 10.09.2020, hence the instant petition, before this Court.

2. The learned State counsel, does not contest, the factum of the bail applicant being a minor, therefore, he is to be construed to be a juvenile in conflict with law. His bail application is regulated by Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as the 'Act').

3. The apt provisions, borne, in Section 12, of, the Juvenile Justice (Care and Protection of Children) Act, 2015, provision whereof, is,

extracted hereinafter, confer a special statutory right, upon a juvenile offender, to, de hors any fettering provisions, existing, in the Cr.P.C., against the affording of indulgence, of, bail, vis-à-vis him, for his allegedly committing, a non-bailable heinous offence, to rather in consonance therewith, hence, espouse relief, of his being enlarged on bail, even vis-à-vis any non-bailable heinous offence, and, importantly upon saturation, of, the all apt condition precedent(s) borne in sub-section (1) thereof, thereupon, hence the Courts of law, are, enjoined to release him on bail, with or without surety(ies):

“ 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 1[or placed under the supervision of a Probation Officer or under the care of any fit institution of 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, 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 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.*
- (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.”*

4. However, the aforesaid statutory power and jurisdiction, as, bestowed upon Courts of law, is subject, to, the condition, (i) of there appearing no reasonable grounds for believing, of, hence his being likely to be brought into association with any known criminal, (ii) or there appearing any reasonable ground for believing of his being hence exposed to moral, physical or psychological danger or his release defeating the ends of justice. The learned Principal Magistrate Juvenile Justice Board, had, in paragraph-8 of the impugned order, para whereof is extracted hereinafter, hence concluded, that the afore (ii) condition, embodied in Section 12 of the Act, hence comprising the forbidden statutory factum, of there being every possibility of the juvenile offender, being exposed, to moral, physical or psychological danger or his release defeating the ends of justice, rather working against the petitioner. Consequently, he declined relief to him.

“ 8. Be that as it may, in the case in hand bail applicant aged 17-1/2 years has been found in conscious possession of large number of intoxicant tablets. In this scenario, if the bail applicant is released on bail, there is every possibility that he would be brought into association with like minded persons and which factor would expose him to moral, physical and psychological danger and which factor would defeat the ends of justice.”

5. The afore order was upheld by the learned Additional Sessions Judge concerned.

6. Though in sub Section (i) of Section 12 of the Act, occurs a nonobstante clause, inasmuch as, *de hors* anything contained in the Cr.P.C., 1973 (2) of 1974, hence prohibiting the grant of bail qua non-bailable offences, as, committed by persons other than juveniles not in conflict with law, rather it also mandating that the application for bail preferred by a juvenile in conflict with law, becoming not regulated by the apposite provisions carried in the Cr.P.C., rather becoming completely regulated by Section 12 of the Act.

7. Consequently, it is to be determined from the order challenged before this Court, whether the ingredients (*supra*), as carried in the provisions occurring in sub Section (1) of Section 12 of the Act, became established before the learned Court below. Though in paragraph-8 of the impugned order, the learned Court has referred to the abovestated ingredients carried in the proviso to sub Section (1) of Section 12 of the Act. However, the learned Judge has not proceeded, to either refer to any material on record, if any, as may have been placed, in support of the factum, that upon the bail applicant being released on bail, therebeing, every likelihood of the bail applicant-jvenile in conflict with law, being exposed to moral, and, psychological harm, and, or his being put in association with hardened criminals.

8. However, the learned Judge referred to the gravity of the alleged offence, made against the bail applicant, and, hence concluded that the ends of justice, would suffer in case the petitioner herein is released, on

bail, moreso if the bail applicant is released on bail, there is every possibility that he would be brought into association with like minded persons and which factor would expose him to moral, physical and psychological danger . Though on afore ground, the learned Judge, could made a valid order, within the ambit of the proviso to sub Section (1) of Section 12 of the Act, as, it would advance the ends of justice.

9. Though it is evident, that the learned Court concerned, while making the afore conclusion, has not firmly anchored the same, upon any cogent evidence, consequently the afore made conclusion is not well founded. Nonetheless this Court had made the hereinafter direction, upon the learned State Counsel, through an order made on 18.11.2021, direction whereof is extracted hereinafter:-

“ *Notice to respondent.*

2. Mr. Bhupender Beniwal, Assistant Advocate General, Punjab, appears and waives notice on behalf of the respondent.

3. The District Probation Officer of the district concerned is directed to, on affidavit, make a report with respect to, that in case the facility of bail is granted to juvenile in conflict with law, whether, there is every livelihood of his being put to moral / physical / psychological harm.

4. List on 10.12.2021. ”

10. In compliance of the afore order, the learned State Counsel has placed, on record a copy of the report of the District Probation Officer, Patiala. A perusal of the afore report, discloses that the petitioner / juvenile belongs to a poor family. It is also disclosed therein, that the bail applicant

personality, and, is interested in building his skills for personal development. Moreover, it is disclosed that the petitioner is a daily wager, and, his mother and younger sister / minor, all share a good relationship with their neighbours. Since the afore report discloses that the petitioner is not derelict, consequently it appears that there is no purported danger, of his being put to moral, physical and psychological harm, hence upon his being released on bail.

11. Moreover, even if assumingly, that there is some possibility of any juvenile in conflict with law, being put to put moral, physical and psychological harm, thereupon, it can become mitigated upon the Court concerned, rather making directions, qua his during the tenure of his being on bail, remaining under the supervision of a Probation Officer or under the care of a competent person. Moreso, since the afore provision is a specially conferred privilege on a juvenile in conflict with law. Consequently, for the above reason, also the reason (supra) declining bail, to the petitioner becomes infirm.

12. In any case, and, reiteratedly if there was some likelihood, as stated (supra), thereupon, the learned Judge could obviously obviate it, though his making rather a direction, that the juvenile in conflict being placed under the supervision of a Probation Officer, rather than declining bail to him. The above mere surmises, and, conjunctures are misfounded, and, cannot be a good ground for declining bail to the bail applicant. Therefore, the impugned order is quashed and set aside. The juvenile in conflict with law is ordered to be released from custody, and, is directed to be ensured by the District Magistrate concerned, that he be forthwith placed,

under the supervision of a Probation Officer. In case, the Probation Officer during the course of his supervision finds the juvenile in conflict with law, aligning or associating himself with hardened criminals, and, or his influencing prosecution witnesses, he can thereupon, make a report to this Court, and, hence this Court after hearing the juvenile in conflict with law, may make an order for rescinding the facility, as today becomes granted to him.

13. The petition stands allowed.

December 16, 2021

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**(SURESHWAR THAKUR)
JUDGE**

<i>Whether Speaking/reasoned</i>	<i>Yes</i>
<i>Whether Reportable</i>	<i>Yes</i>