

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

CRR-146-2022 (O&M)

Date of Decision: 13.09.2022

**POOJA RAM SONKAR @ ANAND
VS.**

... PETITIONER

STATE OF PUNJAB

.. RESPONDENT

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present : Mr.Bhavesh Aggarwal, Advocate,
for the petitioner.

Mr. Hittan Nehra, Additional Advocate General, Punjab.

VIVEK PURI, J.(ORAL)

The present petition has been preferred against the order dated 21.10.2021 passed by Juvenile Justice Board, vide which the concession of regular bail has been declined to the petitioner and also the judgment dated 22.11.2021 passed by the Court of learned Additional Sessions Judge, vide which the appeal preferred by the petitioner has been dismissed.

The petitioner is facing proceedings before the Juvenile Justice Board in the case bearing FIR No.170 dated 19.06.2019 under Sections 363, 366-A IPC (Section 376 IPC and Section 4 of POCSO Act added subsequently).

Briefly, the FIR has been registered on the basis of the statement of the father of the victim alleging that the victim is aged about 16 years and on 17.08.2019, she went missing from the house. It also revealed that the petitioner was also not present in the house. It was suspected that the petitioner has kidnapped her. Accordingly, the FIR was registered. Subsequently, the victim was recovered. In her statement under Section 164 Cr.P.C., the victim has attributed the allegation of commission of penetrative sexual assault upon her to the petitioner. Consequently, the offence under Section 376 IPC and Section 4 of POCSO Act was added.

Learned counsel for the petitioner submits that in terms of the order dated 06.09.2021 passed by the Court of learned Additional Sessions Judge, the application of the petitioner for declaring him as juvenile was allowed and the case was sent to Juvenile Justice Board for proceeding further in the matter. The age of petitioner was less than 18 years. Consequently, the proceedings against him are pending before the Juvenile Justice Board. Out of 15, 05 witnesses including the victim have been examined. The arrest of the petitioner was effected on 18.02.2020 and he is not involved in any other case.

Learned State counsel has opposed the prayer of the petitioner for bail on the score that the victim has imputed the allegations of commission of penetrative sexual assault in her statement under Section 164 Cr.P.C. and also supported the prosecution version during the course of trial.

It may be mentioned here that the controversy with regard to grant of bail to a juvenile has to be adjudicated on the touchstone of Section 12 of Juvenile Justice (Care and Protection of Children) Act 2015. The grant of bail to a juvenile is a rule and declining the same is an exception. The bail to a juvenile can be declined on the following grounds:-

- (1)if there appears to be reasonable ground for believing that
the release is likely to bring him in association with any non-criminal, or
- (2)likely to expose the juvenile to moral, physical or psychological danger, or
- (3)the release defeat the ends of justice.

The gravity of allegations may not be a decisive factor to adjudicate the claim of the juvenile for release on bail.

The learned Appellate Court in the order dated 22.11.2021 has observed that as per the report of Legal-cum-Probationary Officer, the petitioner was stated to be under peer group influence and having bad habits (to buy

drugs/alcohol). As such, the opinion formulated by both the Courts below is that in the event petitioner is released on bail, it would expose him to moral, physical or psychological danger and it would also defeat the ends of justice. However, the custody certificate placed on record does not indicate that the petitioner is involved in any other case much less under the NDPS Act or Excise Act. In the absence of any such criminal antecedents, it may not be appropriate to hold that the release on bail will expose the petitioner to moral, physical or psychological danger or defeat the ends of justice. Moreover, the petitioner is in custody for a period of 2½ years and the victim has already been examined.

Keeping in view the aforesaid, sufficient grounds are made out to extend the concession of bail to the petitioner. Accordingly, the impugned order dated 21.10.2021 passed by the Juvenile Justice Board and judgment dated 22.11.2021 passed by the Court of learned Additional Sessions Judge are set aside and the petitioner is ordered to be released on bail, subject to his furnishing bail/surety bonds to the satisfaction of the Juvenile Justice Board.

Petition is, accordingly, allowed.

13.09.2022
smriti

(VIVEK PURI)
JUDGE

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