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

CRR-1229-2021 (O&M)
Date of decision:04.02.2022

SUMIT

...Petitioner

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Sant Lal Barwala, Advocate
for the petitioner.

Mr. Tanuj Sharma, AAG, Haryana.

(Through Video Conferencing)

SURESHWAR THAKUR, J. (ORAL)

1. In FIR No.0474 of 06.08.2021, registered at Police Station Azad Nagar, Hisar, an offence under Section 392 IPC, is embodied.
2. The present petitioner at the relevant time of commission of offence (supra), was a juvenile in conflict with law, and in so far as his being tried for the commission of the offence (supra), it would become conducted by the J.J.B., concerned.
3. The other co-accused alongwith the present petitioner, are not juveniles in conflict with law, and, they all are facing trial for commission of offence (supra), before the learned Court concerned.
4. The juvenile in conflict with law, who is the present petitioner, filed an application under Section 12 of The Juvenile Justice (Care and Protection of Children) Act, 2015, claiming therein the relief of his being granted the facility of bail. The provisions of Section 12 of statute (supra) are extracted hereinafter.

“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.”

5. The learned Principal Magistrate of the Juvenile Justice Board, Hisar, declined the above relief to the bail petitioner. The reason as set forth in the order, as made by the learned Principal Magistrate, JJB Hisar, is grooved, in the factum, that in case the facility of bail is granted to the petitioner, there

would be every likelihood of his being brought in the association of criminals and, also there being an imminent likelihood of his being exposed to moral, physical and psychological danger.

6. The aggrieved juvenile in conflict with law assailed the order (supra), through his instituting a criminal appeal before the learned Additional Sessions Judge, Hisar. The learned Additional Sessions Judge concerned, also did not grant relief to the bail petitioner.

7. The order, as made by the learned Additional Sessions Judge, concerned, upon criminal appeal No.61 of 2021, and, hence affirming the order made by the learned Principal Magistrate, Juvenile Justice Board, Hisar, becomes assailed before this Court.

8. Both the learned Courts below depended, upon the proviso to Section 12 of Act (supra), in concluding that upon, the facility of bail, being granted to the petitioner, there being every likelihood of his being brought in association with hardened criminals, and, that there is being every likelihood of his hence being exposed to moral, physical and psychological danger. The afore meted reasons, in the concurrent orders pronounced, by both the learned Courts below, though, are *prima-facie* grooved in the proviso to Section 12 of Act (supra). However, both the learned Courts below proceeded to, without any tangible and concrete evidence with respect to the afore factum existing on record rather made the above conclusion. Therefore, the afore meted grounds, by both the learned Courts below, appear(s) to be *prima-facie* imaginative, and, also surmisal.

9. Be that as it may, sub-section 1 of Section 12 (supra), invests a statutory leverage in the Courts below to order for release on bail, of the juvenile in conflict with law, and, with an alternate thereto statutory leverage, inasmuch,

as, a direction being also amenable to be rendered for the juvenile in conflict with law being placed under the supervision of a Probation Officer, and/or, under the care of any fit person. The above alternative statutory empowerment to the granting of bail, and, as cast in sub-section 1 of Section 12 (supra), has neither been explored, nor obviously has been thought fit to be worked vis-a-vis the juvenile in conflict with law. The afore mechanism, alternative to the juvenile in conflict with law, being released on bail, appears to be well conceived, and, is a well contemplated legislative mechanism hence for ensuring that through availment of the afore statutory mechanism, the juvenile in conflict with law, hence is not brought in association with any hardened criminal, and, nor is exposed to any moral, physical and psychological danger. In case, the afore was explored by both the learned Courts below, thereupon, the afore ill-consequence working upon the juvenile in conflict with law, may have become allayed or may have become mitigated. As afore stated the above alternative, has neither been explored nor put into action by both the learned Courts below, leaving the ill-consequences, that the juvenile in conflict with law, has been, despite the above legislative mechanism existing in the statute (supra), being deprived to secure his release from judicial detention, whether, rather there appears to be a larger likelihood of his being put into association with hardened criminals, and, also his being exposed to, while being in association with hardened criminals, to moral, physical, and, psychological danger.

10. For ensuring that the afore mechanism becomes galvanised and, that the ill-consequence(s) (supra), become abated, this Court deems it fit to interfere with impugned orders, as rendered respectively by both the learned Courts below. Consequently, the impugned orders are quashed, and, set aside, with a direction, that the juvenile in conflict with law shall be released, and,

shall be upon his release, become placed by the District Collector concerned, under, the supervision of the Child Welfare Officer. The Child Welfare Officer shall continue to make a report to the District Collector concerned, with respect to the conduct of the juvenile in conflict with law, and, in case there is any derelict conduct, on the part of juvenile in conflict with law, thereupon it shall be open to the District Collector concerned/Child Welfare Officer concerned, to make a report to this Court.

11. Disposed of.

12. Pending miscellaneous application(s), if any, stand(s), disposed of.

(SURESHWAR THAKUR)
JUDGE

04.02.2022

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Whether speaking/reasoned:-	Yes/No
<i>Whether reportable:</i>	<i>Yes/No</i>