

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

218

CRR-1788-2021

Date of Decision: 20.06.2022

ROHIT KUMAR

... PETITIONER

VERSUS

STATE OF HARYANA

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. R.S. Mamli, Advocate
for the petitioner.

Mr. Randhir Singh, Addl. A.G., Haryana.

VINOD S. BHARDWAJ, J. (Oral)

Instant petition has been preferred against the order dated 23.11.2021 passed by the Principal Magistrate, Juvenile Justice Board, Gurugram as well as order dated 06.12.2021 passed by the Presiding Officer, Children's Court-cum-Additional Sessions Judge, Fast Track Special Court, Gurugram whereby the bail petition preferred by the petitioner as well as appeal preferred against the order dated 23.11.2021 were dismissed.

Briefly, the facts of the case are that the father of the minor girl child (name withheld to conceal the identity of the victim) moved a complaint before the police on 11.09.2021 alleging that the victim girl aged about four years was playing in the building premises on 10.09.2021 near the room of a popcorn maker. In the meanwhile, the petitioner (who is a child in conflict with law), who was residing in the neighbourhood, took the victim inside the room on the pretext of giving popcorns to her; and after opening her trousers, he inserted his fingers in her private part. When he was in the

process of inserting his genital part into the victim, she rushed outside and raised alarm, whereupon the petitioner is stated to have left the locality. The victim child revealed the occurrence to her father and on a complaint moved in this regard, the instant FIR had been registered.

Learned counsel for the petitioner contends that the petitioner was 14 years of age and is a child in conflict with law. Even though the offence in question attracts the provisions of POCSO Act, however, Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015 comes into operation and that bail has to be granted to the petitioner (child in conflict with law), except the Court has reasonable grounds to believe that the release of the child in conflict with law is likely to bring him into association with the more criminals or expose the child to moral, physical or psychological danger or that the such release would defeat the ends of justice. He contends that the bail petition preferred by the petitioner was declined without assigning any reasons that have been statutorily prescribed as the only reasons available for declining the concession of bail.

Learned State counsel, on the other hand, vehemently argued that the victim girl also happens to be a child. The presence of petitioner in the same locality is likely to have severe impact on the psychological condition of victim and his continued presence in the same locality is most likely to impact her safety and security. He contends that the victim herself being vulnerable, would require protection in terms of the judgment passed by the Hon'ble Supreme Court in the matter of **Mahender Chawla and others Vs. Union of India and others** reported as **(2019) 14 SCC 615**.

Learned counsel for the petitioner submits that the petitioner shall

not reside in the said locality during the pendency of the proceedings in the instant case and shall ensure that the petitioner does not come in contact with the victim or any member of her family. He further contends that the petitioner is in custody since 11.09.2021 and that the maximum sentence, in the event of conviction, permissible to be imposed under the Juvenile Justice (Care and Protection of Children) Act, 2015 is three years.

He further contends that the proceedings before the Juvenile Justice Board, Gurugram are still at primary stage.

Taking into consideration the mandate of Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015 as well as the directions given by the Hon'ble Supreme Court for ensuring the protection of the child witnesses, I deem it appropriate to allow the instant petition by balancing the statutory mandate and directions of the Hon'ble Supreme Court.

Accordingly, the present petition is allowed and the petitioner is admitted to regular bail subject to his furnishing bail/surety bonds to the satisfaction of trial Court/Juvenile Justice Board/Duty Magistrate, concerned, subject further to the condition that the petitioner shall not reside in or visit the said locality/neighbourhood/village of the victim and shall not contact or try to contact or confront the victim or any of the members of her family either himself or through any of his associates/relatives during the pendency of the proceedings before Juvenile Justice Board, Gurugram.

It is made clear that the petitioner shall not extend any threat and shall not influence any prosecution witnesses in any manner directly or indirectly.

The observations made hereinabove shall not be construed as an

expression on the merits of the case and the trial Court/JJB shall decide the case on the basis of available material.

Petition stands allowed accordingly.

(VINOD S. BHARDWAJ)
JUDGE

20.06.2022

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No