

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-484-2023 (O&M)
Date of decision : 28.11.2023

Akashdeep Singh @ Akash ... Petitioner(s)

Versus

State of Punjab ... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Ms. Aanchal Thakur, Advocate for the petitioner.

Mr. M.S. Tiwana, AAG Punjab.

ALKA SARIN, J. (ORAL)

CRM-8226-2023

1. This is an application under Section 5 of the Limitation Act for condonation of delay of 119 days in filing the present petition.

2. For the reasons stated in the application, the same is allowed. The delay of 119 days in filing the present petition is condoned.

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3. The present revision petition has been filed challenging the orders dated 09.05.2022 and 22.07.2022 passed by the Principal Magistrate, Juvenile Justice Board, Tarn Taran and Additional Sessions Judge, Tarn Taran respectively, whereby the application filed by the petitioner for grant of bail under Section 12 of the Juvenile Justice (Care and Protection of

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Children) Act, 2015 (hereinafter referred to as the 'JJ Act') was dismissed.

4. The brief facts relevant to the present case are that a FIR No.213 dated 23.12.2021 under Sections 376-D/342/263/366 of the Indian Penal Code, 1860 and Section 6 of the Protection of Children from Sexual Offences Act, 2012 was registered on the statement of the prosecutrix. The petitioner is alleged to have been 17 years and 06 months at the time of the incident. The petitioner was produced before the Juvenile Justice Board on 25.12.2021 and has been in an observation home since 25.12.2021. An application under Section 12 of the JJ Act was filed before the Juvenile Justice Board, Tarn Taran on 28.04.2022. The said application was dismissed vide order dated 09.05.2022. Aggrieved against the said order, an appeal was preferred which came to be dismissed on 22.07.2022 upholding the order dated 09.05.2022.

3. Learned counsel for the petitioner would contend that the provisions of Section 12 of the JJ Act have not been complied with and that the case of the petitioner does not fall within the proviso to Section 12 of the JJ Act. It is further the contention of the learned counsel that even the Social Investigation Report was not called for before deciding the application under Section 12 of the JJ Act.

5. Learned State counsel on instructions from ASI Sukhdev Singh has contended that there are serious allegations against the petitioner and that releasing him on bail would defeat the ends of justice and he is likely to come in contact with criminals.

6. I have heard learned counsel for the parties.

7. This Court in the case of **Vishvas vs. State of Punjab [CRR No.53 of 2021 decided on 08.02.2021]** while dealing with the grant of bail to a Child-in-Conflict-with-Law under Section 12 of the JJ Act held as under:

“16. The social investigation report is not for discovering evidence regarding the alleged offence. The focus of the social investigation report is to identify and understand the circumstances of the child in question, and what may have led to the alleged crime. The report would also enable the Board to come to a decision as to whether there are any grounds of denying bail, as per the proviso to Section 12(1) of the J.J. Act, 2015. Therefore, it is incumbent upon the J.J. Board to take into consideration the social investigation report and make an objective assessment of the reasonable grounds for rejecting the bail application of the juvenile.”

8. Section 12 of the JJ Act reads as under :

“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 persons 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 fulfill 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.”

9. Granting bail to the Child-in-Conflict-with-Law is a rule and rejection of the same is an exception. Section 12 of the JJ Act provides that notwithstanding anything contained in the Code of Criminal Procedure or any other law for the time being in force, except for the contingencies provided in the proviso to Section 12(1) of the JJ Act, bail cannot be denied

to a Child-in-Conflict-with-Law. It is trite that neither gravity of the offence nor the fact that the co-accused are yet to be apprehended can be a ground for rejection of the prayer. Learned State counsel has neither been able to refer to any material or explain as to how the case of the petitioner would be covered under the proviso to Section 12(1) of the JJ Act. Mere apprehension cannot be a ground to decline the prayer for grant of bail. The petitioner has already been in the Observation Home since 25.12.2021.

10. Keeping in view the above and the fact that there is no material on the record to bring the case of the petitioner within the purview of the proviso to Section 12(1) of the JJ Act, the impugned orders dated 09.05.2022 and 22.07.2022 passed by the Principal Magistrate, Juvenile Justice Board, Tarn Taran and Additional Sessions Judge, Tarn Taran respectively, cannot be sustained in law and the same are accordingly set aside.

11. Without commenting on merits of the case, the petitioner is directed to be released on bail subject to his furnishing bail and surety bonds to the satisfaction of the Principal Magistrate, Juvenile Justice Board concerned.

12. It is further ordered that the petitioner shall attend the trial on regular basis and shall also report to the Probation Officer once in every two months and his performance and conduct shall be monitored by the Probation Officer. Apart from that, on being released on bail, the petitioner shall furnish his contact number and residential address to the Investigating Officer as well as the Principal Judge, Juvenile Justice Board concerned and shall also keep them updated, in case there is any change.

13. However, the Prosecution will always be at liberty to apply for cancellation of bail in case the petitioner is found to be misusing the concession of bail in any manner.
14. It is also made clear that any observation made herein shall not be treated as an expression of opinion on the merits of the case.
15. Disposed off. Pending applications, if any, also stand disposed off.

28.11.2023
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO