

203 IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH

CRR-1035-2023

Date of Decision: 03.08.2023

BXXXXXXXXXX (Child in conflict with law)

...Petitioner

V/S

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present: Mr.Harpal Singh, Advocate
for the petitioner.

Mr.Vikas Arora, AAG Punjab.

DEEPAK MANCHANDA J. Oral

Petitioner has preferred this present criminal revision petition by way of impugned order dated 28.09.2022 passed by the learned Principal Magistrate, (JJB) Ferozepur District Ferozepur in case FIR No.212 dated 26.08.2022 registered under Section 377 of the Indian Penal Code, 1860 and Sections 3 and 4 of Protection of Children from Sexual Offences Act, (Amended) 2012, 2019 at Police Station Guruharsahai, District Ferozepur, CIS No.BA-551/2022 CNR No.PBFZ030068242022 titled as State Vs. Bittu alia Abhi as well as order dated 15.11.2022 passed by learned Additional Sessions Judge Fast Track Court (exclusively dealing with rape cases) Ferozepur in CRA No.156/2022 CNR No.PBFZ010072812022 may kindly be set aside and petitioner be released on bail.

During the pendency of the present revision petition vide order dated 16.05.2023, State was directed to file the social investigation report. In compliance of the same, the social investigation report dated 15.07.2023 along with fresh status report by way of an affidavit of Sh. Yadwinder

Singh, PPS, Deputy Superintendent of Police (Sub Division) Guruharsahai, District Ferozepur and recorded statements have been filed, which are taken on record.

Brief facts of the case are that on 24.08.2022 at about 3.00 PM, when minor sons of the complainant did not return from school, then he went for their search, saw that his elder son was sitting at shop of Rehmat Samandar, who told the complainant that the minor son had been enticed away by **BXXXXXXXXXX** (*Child in conflict with law*) aged about 18 to 20 years by inducing him, to arrange snacks (Samosa). When the complainant went towards godown side, he heard cries of victim **BXXXXXXXXXX** (name withheld). On seeing the complainant, **BXXXXXXXXXX** (**Child in conflict with law**) managed to fled away on his motorcycle. The complainant saw that the school uniform of **BXXXXXXXXXX** (name withheld) was smudged with blood and there was perfused bleeding from the inners of his son. **BXXXXXXXXXX** (**Child in conflict with law**) had defiled his minor son by committing un-natural sex. **BXXXXXXXXXX** (name withheld) was taken to Civil Hospital, Ferozepur where, he was subjected to medico legal examination.

The appeal filed by the petitioner was dismissed on the ground that as per report submitted, father of **BXXXXXXXXXX** (**Child in conflict with law**) is mentally incapacitated and, the mother is a labourer being woman, is not able to secure and protect the life and liberty of **BXXXXXXXXXX** (*Child in conflict with law*). With regard to submissions made by mother of **BXXXXXXXXXX** (*Child in conflict with law*) that he has been falsely implicated, if **BXXXXXXXXXX** (**Child in conflict with law**) be released from protection custody, it may fall his life in danger or

into company of such bad elements which will defeat the ends of justice.

Learned counsel for the petitioner contends that petitioner is a juvenile, and he has been implicated by the complainant due to personal enmity with the family of petitioner by the complainant, although the petitioner has never been involved in any such crime, and the petitioner has no concern with the alleged offence. He submits that the petitioner was detained by the police on 09.09.2022 and since then the petitioner is in custody, and no useful purpose will be served to keep the petitioner in detention, moreover, when nothing has to be recovered from the petitioner, and the petitioner is not required by the police for further investigation. Learned counsel further submits that as per provisions contained in Section 12 of the Juvenile Justice Act-2002, juvenile is entitled for bail as a matter of right, unless the case fall under the exceptions carved out in the Juvenile Justice Act-2002 Act itself, however, in the present case in hand, there is no possibility that granting of bail to the petitioner will expose the juvenile to moral, physical or psychological danger, or his release would defeat the ends of justice.

Learned counsel also submits that as per status report, the report of DNA test is also awaited for which sample was sent to Forensic Science Laboratory, Kharar.

On the other hand, learned State counsel on instructions from Investigation Officer, ASI Trilok Singh has opposed the aforesaid prayer, however, does not dispute that the FSL report is still awaited, the challan against the petitioner has already been presented in the Court on 31.10.2022 where the charges have also been framed. State counsel also does not dispute the Social Investigation Report dated 15.07.2023 along with reply

dated 15.05.2023.

I have heard learned counsel for both the parties.

From a bare reading of the provisions of Section 12 of “Juvenile Justice Act, 2015”, it appears that the intention of the legislature is to grant bail to the juvenile irrespective of the nature or gravity of the offence alleged to have been committed by the juvenile, and bail can be declined only in such cases where there are reasonable grounds to believe that the release is likely to bring the juvenile into association of any known criminal or expose him to moral, physical, or psychological danger, or that his release would defeat the ends of justice. The gravity of the offence is not a relevant consideration for declining the bail to the juvenile. A juvenile can be denied the concession of bail if any of the three contingencies specified under Section 12(1) of “Juvenile Justice Act, 2015” is available.

As per status report dated 15.07.2023 petitioner has not been found to be involved in any other criminal case or in similar offence and the behaviour of the petitioner has been found to be good in the village regarding which statements of the villagers were also recorded, which are annexed with the fresh status report dated 01.08.2023, who all are known to the petitioner and his family members. Further, FSL report with regard to DNA test is also awaited and the challan was presented on 31.10.2022 and charges have also been framed on 05.12.2022, out of total 18 prosecution witnesses, 05 have been examined till date.

In view of the above foregoing discussion, I am not satisfied with the reasoning and conclusion of the Appellate Court as well as the Juvenile Justice Board in the impugned judgment and order. The Juvenile Justice Board as well as the Appellate Court have not properly appreciated the

mandatory provisions of Section 12 of “Juvenile Justice Act, 2015” as well as other provisions in relation to juvenile 'X' and have declined to grant bail merely on the basis of unfounded apprehension. In the absence of any material or evidence of reasonable grounds, it cannot be said that his release would defeat the ends of justice and have failed to give reasons on three contingencies for declining the bail to the revisionist. The findings recorded by the Juvenile Justice Board as well as the Appellate Court are based on the heinousness of the offence, therefore, the order dated 28.09.2022 passed by the Juvenile Justice Board and order dated 15.11.2022 passed by Additional Sessions Judge Fast Track Court, Ferozepur are not sustainable. Hence, the above mentioned orders are set aside and the present criminal revision is allowed.

As such, sufficient mitigating circumstances are made out to extend the concession of bail to the petitioner. Therefore, without making any expression of opinion on the merits of the case, it is ordered that the petitioner be released on regular bail subject to his furnishing requisite bail bonds/surety bonds to the satisfaction of the concerned trial Court/Chief Judicial Magistrate/Duty Magistrate.

The petition is allowed.

03.08.2023
sapna

(DEEPAK MANCHANDA)
JUDGE

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