

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRA-S-1083-2023
Reserved on: 07.11.2023
Date of Decision: 15.11.2023

SAHIL KHAN ...Applicant/appellant
Versus
STATE OF HARYANA ...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Virender Kumar, Advocate
for the applicant-appellant.

Mr. Neeraj Poswal, A.A.G., Haryana.

MANISHA BATRA, J. (Oral)

1. This appeal has been filed by the appellant against the order dated 22.02.2023, passed by the Court of Additional Sessions Judge-cum-Children's Court, Karnal in bail application No. 544-2023 whereby, the prayer made by the appellant for grant of regular bail had been declined.
2. Brief facts of the case, relevant for the purpose of disposal of this appeal, are that the FIR No. 141 dated 07.03.2022 was registered Police Station Gharaunda, Karnal on the basis of a written complaint submitted by 'A' mother of the prosecutrix (names of mother and the prosecutrix withheld) alleging therein that she had noticed from some days that the prosecutrix who was her 15 year old minor daughter studying in Class-Xth, was not behaving normally. On making enquiries from her, she disclosed to the complainant that the appellant-accused Sahil had been ravishing her from the last one year and had also been extending threats to make her videos viral if she disclosed about the acts done by him to anyone. The complainant alleged that she had gone to complain about the matter to the family members of the accused who extended threat to kill her.

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3. On registration of FIR under Sections 376 and 506 of IPC read with Section 6 of POCSO Act, investigation proceedings were initiated. The statement of the victim was recorded under Section 164 of Cr.P.C. She was medically examined. The appellant, who was also below the age of 18 years at the time of incident was detained on 09.03.2022. He suffered a disclosure statement and demarcated the place of occurrence. His medical examination was also conducted. Upon completion of inquiry, final report was submitted before the Juvenile Justice Board. Vide order dated 07.05.2022 passed by the Principal Magistrate, Juvenile Justice Board, the appellant was ordered to be tried by the Children Court as an adult. Trial against him is going on. The appellant had moved an application for grant of regular bail before the Children Court, which was dismissed vide order dated 22.02.2023,

4. It is submitted in the grounds of appeal and it was argued by learned counsel for the appellant that the impugned order was liable to be set aside as the same was not sustainable in the eyes of law. The learned Children Court ignored the fact that the appellant was a juvenile in conflict with law being below the age of 18 years. He was in custody since 09.03.2022. He had been falsely implicated in this case. The material witnesses had since been examined. There were no chances of his intimidating the witnesses. The learned Children Court also ignored the fact that the provisions of Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter to be mentioned as “JJ Act 2015”), were fully attracted in this case and he deserved to be released on bail as there was nothing on record to show that his release was likely to bring him into association with any known-criminal or expose him to moral, physical or psychological danger or his release would defeat the ends of justice. With

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these broad submissions, he stressed that the appeal deserved to be allowed and appellant deserved to be extended benefit of regular bail.

5. The respondent-State contested the appeal by submitting that there were serious allegations against the appellant. The prosecutrix and her mother had fully supported the prosecution case in their respective sworn depositions recorded in the Court. The trial is expedited and there is nothing to show that there would be any undue delay in conclusion of the same. Therefore, he argued that the appeal did not deserve to be allowed.

6. I have heard learned counsel for the appellant and learned State counsel and have perused the record.

7. The moot question, which falls for consideration before this Court in the present appeal filed under Section 101 of JJ Act, 2015, is with regard to the fact as to whether the order passed by the Children Court while rejecting the bail application of the appellant, is within the four corners of Section 12 of the JJ Act, 2015? This section postulates rule of grant of bail for every child in conflict with law, who is alleged to have committed a bailable or non-bailable offence, if he/she is apprehended or detained by the police and is being produced before the Board. Such child has to be released on bail with or without surety. Further, as per proviso to this section, such child shall not be released if there appear to be reasonable grounds for believing that his/her 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.

8. From a bare reading of the provision of Section 12 of the JJ

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Act, 2015, it appears that the intention of the legislature was to grant bail to a juvenile in conflict with law irrespective of the nature or gravity of the offence alleged to have been committed by him and the same can be declined only in cases where reasonable grounds are there for believing that the release is likely to bring him into association with any known-criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice.

9. It is well-settled that in the matter of normal bails, either anticipatory or regular bails, which are to be granted under the provisions of Criminal Procedure Code, the gravity of the offences and charges have to be seen. However, in cases of bail under JJ Act, 2015, there is complete departure to the same as the ingredients as mentioned under Section 12 of the JJ Act, 2015, are to be adhered to in this regard. Reference in this regard can be made to **Prakash Vs. State of Rajasthan 2006 Criminal Law General 1373** wherein it was observed that at the time of consideration of bail under Section 12 of the JJ Act, 2015, the merit or nature of the offence has no relevancy. The language of Section 12 of the Juvenile Justice Act, 2015, using the word “shall” is mandatory in nature and providing non-obstante clause by using the expression “notwithstanding anything contained in the Code of Criminal Procedure, 1973 or any other law for the time being in force, be released on bail” shows the intention of the legislature to grant bail to the delinquent juvenile offender by releasing him on bail who is arrested or produced before a Court, however, with the exceptions to release him on bail if there are reasonable grounds for believing that his release is likely to bring him into association with any known-criminal or expose him to moral, physical or psychological danger or his release would defeat the ends of justice. It was observed that the Juvenile Justice Act, 2015 which

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was a beneficial and social oriented legislation needs to be given full effect by all concerned, whenever the case of juvenile came before them and that in the absence of any material or evidence of reasonable grounds to believe that the juvenile in conflict with law, if released on bail was likely to come into association with known-criminals or exposed to moral, physical or psychological danger, it could not be said that his release would defeat the ends of justice.

10. Reference can further be made to **Shiv Kumar @ Sadhu Vs. State of U.P. 2010 (1) ACC 616**, wherein it was observed that gravity of the offence has not been mentioned as a ground for rejection of bail under Section 12 of the Juvenile Justice Act, 2015. Similar observations have been made by other Co-ordinate Benches of this Court in **Krishan Kumar Vs State of Haryana 2020 (2) RCR (criminal) 342**, **Vishal Vs State of Haryana 2020 (4) RCR (criminal) 475** and **CRR No.962-2020** titled as **Sanjeet Vs State of Haryana decided on 02.07.2020** by holding that for invoking the exceptions of Section 12 of the Juvenile Justice Act, 2015, as culled out for declining bail to a juvenile in conflict with law, there has to be some material before the competent authority on the basis of which, it can be said that the release of the juvenile would fall within the exceptions recognized under Section 12 of the Juvenile Justice Act, 2015 and that the seriousness of offence as mentioned in the FIR would not be a ground to deny to the juvenile concession of bail.

11. In the instant case, the allegations against the appellant are that he had ravished the minor victim one year prior to lodging of the FIR and had then committed rape upon her again. The trial against him is going on. The prosecutrix and her mother have been examined. The appellant is in custody since 9th March 2022. The order passed by learned Children Court,

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which is under challenge before this Court, itself shows that the prayer made by the appellant for grant of bail had, not been considered in terms of provisions of Section 12 of the Juvenile Justice Act, 2015. There is no finding in the impugned order about the conditions prescribed under Section 12 of the Juvenile Justice Act, 2015 for rejection of bail of the appellant. From the material available on record, it is revealed that the Juvenile Justice Board, on enquiry, assessed the age of the appellant to be 17 years and 10 months as on the date of commission of the subject offences. Consequently, considering the nature of the offence to be heinous, the Board conducted preliminary assessment regarding mental and physical capacity of the appellant to commit and understand the consequences of the offence, and after being satisfied passed an order for trial of the appellant as an adult before the Children Court. The Children Court has also decided to conduct his trial as an adult. None the less, the Children Court while deciding the bail application of the appellant was required to consider the terms of Section 12 of the Juvenile Justice Act, 2015 but it has remained totally silent with regard to the fact as to how and under what circumstances, the release/bail of the appellant would defeat the purpose of Section 12 of the Juvenile Justice Act, 2015. There is nothing on record to show that there are any criminal antecedents either of the appellant or his family.

12. It is important to mention that the basic object of drafting of the provisions of Juvenile Justice Act, 2015 is reformatory and not punitive, and if in the absence of any negative material available on record, a punitive theory is sought to be adopted, then the very object of Section 12 of the Juvenile Justice Act, 2015, would certainly be deemed to have rendered redundant. Since in this case, the learned Children Court, has not embarked to the conditions prescribed under Section 12 of the Juvenile Justice Act,

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2015, at all, therefore, there is nothing on record to show that there was no reason to believe that the release of the appellant on bail will bring him into association with any known criminal or expose him to moral, physical or psychological danger or would defeat the ends of justice. As observed in *Manmohan Singh Vs. State of Punjab (2004) PLR 136 (P&H), 497* which is an authority of a Co-ordinate Bench of this Court, it is not a matter of subjective satisfaction, but while deciding bail application of a juvenile on the above mentioned grounds, there must be subjective assessment of the reasonable grounds that the release of sub-juvenile would bring him into association with any known-criminal etc.

This Court, while exercising the powers under Section 101 of the Juvenile Justice Act, 2015, cannot embark any enquiry qua the gravity of the allegations or the charges/offences and even cannot make any comment with regard to what had transpired which led to filing of FIR by the prosecutrix. This Court is also conscious of the fact that the Court below while passing the order under challenge has not taken into account, the ingredients of grant of bail or rejecting the bail as envisaged under Section 12 of the Juvenile Justice Act, 2015, and as these ingredients are not shown to have been taken into consideration by learned trial Court, therefore, in the opinion of this Court, the learned Children Court did not satisfy the provisions of Section 12 of Juvenile Justice Act, 2015, and without having any material on record, declined the bail application of the appellant. As such the impugned order cannot be held to be sustainable in the eyes of law. The appellant is in custody since 09.03.2022. The trial is likely is to take time. There is nothing on record to suggest that the release of the appellant on bail shall bring him into association with any known criminal or expose

him to moral, physical or psychological danger or would defeat the ends of

justice. No useful purpose is going to be served by keeping him in custody anymore.

13. With these observations the impugned order is dated 22.02.2023 passed by the learned Children Court is set aside. The appeal is allowed. Since, the appellant has attained majority by now the trial Court/Children Court is directed to release him on bail subject to his executing personal bond with two sureties in the like amount each to the satisfaction of the trial Court. His release shall also be subject to the condition that he shall not indulge in similar offences strictly, shall not temper with the prosecution evidence and will not intimidate the prosecution witnesses either directly or indirectly. In case of violation of the above condition, the prosecution shall be at liberty to see cancellation of the bail order.

November 15, 2023
himanshu

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No