

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

**CRR-1508-2023
Reserved on:05.10.2023
Pronounced on: 07.10.2023**

ANGREJ

..... Petitioner

Versus

STATE OF HARYANA

..... Respondent

CORAM: HON'BLE MR. JUSTICE SANJIV BERRY

Present: Mohd. Arshad, Advocate,
for the petitioner.

Mr. Vishal Malik, DAG, Haryana.

SANJIV BERRY, J.

The present revision petition has been filed by the petitioner challenging the order dated 30.05.2023 passed by the Court of Principal Magistrate Juvenile Justice Board, Panchkula and order dated 13.06.2023 passed by the learned Appellate Court whereby the bail application filed by the petitioner has been dismissed in case FIR No. 09 dated 20.11.2020 under Section 67, 67-A of Information Technology (Amendment) Act 2008 and Section 385 IPC registered at Police Station Cyber Crime, Panchkula, District Panchkula (Section 420, 467, 468, 471, 201 IPC added lateron).

2. It has been contended by learned counsel for the petitioner that the petitioner is a juvenile being tried by Juvenile Justice Board and is in custody since 22.05.2023 which is almost 4 months. He further submitted that as per the prosecution case on 24.10.2020 complainant received a missed call on his

mobile and also a video call on whatsapp which he disconnected later he received threat to pay ₹1199/- through google pay/paytm failing which the objectionable video would be uploaded on the complaint being lodged, the investigation in the case led to the arrest of the petitioner and was produced before Juvenile Board Panchkula on 22.05.2023 and later sent to Observation Home, Ambala.

3. The bail application filed by the petitioner was dismissed vide order dated 30.05.2023 by the learned Principal Magistrate Juvenile Justice Board, Panchkula. The appeal against the order was also dismissed by the learned Additional Sessions Judge, Panchkula and aggrieved by the same the present petition has been preferred.

4. It is contended by learned counsel for the petitioner that both the Courts below have dismissed the bail application of the petitioner, a Juvenile, on flimsy grounds, by observing that his release is likely to bring him into association with criminals. He submits that the Board had never called for the Social Investigation Report which was required before passing any order on the bail application qua the child in conflict under the Act and the Rules framed thereunder. He submitted that the petitioner being child in conflict with law is not a previous convict, nor he is associated with any kind of criminal activity, as such he prayed for grant of bail to the petitioner.

5. The request of petitioner has been opposed by learned State counsel by arguing that considering the heinousness and gravity of the offence the petitioner does not deserve concession of bail, and submitted that there is no infirmity in the impugned order. However, he admitted that the Social Investigation Report was not called for or produced before the Board.

6. After considering the respective submissions and perusing the impugned orders as well as the allegations levelled in the FIR along with the reply submitted by the State, it transpires that consequent upon registration of the FIR the petitioner had been nominated in the present case and being a child in conflict with law, was produced before the Principal Magistrate, Juvenile Justice Board, who sent him to Observation Home, Ambala and later declined the bail application. An appeal preferred against the same was also dismissed by the learned Additional Sessions Judge, Panchkula vide the impugned order dated 13.06.2023.

7. The perusal of Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as 'JJ Act') would reveal that a child conflict in law is granted statutory protection. Ordinarily bail is required to be granted to him but for only in exceptional circumstances that bail can be refused when the Court/Board has to satisfy itself that the accused would not be entitled for grant of bail due to special and extreme circumstances. In the present case, the bail application of the petitioner has been rejected by the Juvenile Justice Board and affirmed by the learned Appellate Court but no such extreme factors have been discussed.

8. Before advertng to the facts of the present case it would be relevant to go through the provisions laid down under Section 12 of the JJ Act, which 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 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 decision.”

9. A bare perusal of the provision of JJ Act would reveal that for a child in conflict in law, bail is the rule and not the jail. The bail to a child in conflict with law could be refused only in case the Court comes to the conclusion on the basis of the material before it that the case falls within the ambit of the exception mentioned in Section 12 of the JJ Act, that is, only in cases where there are reasonable grounds for believing that his release is likely to bring the Juvenile into association of any known criminal or to expose him to moral physical or psychological danger or that his release would defeat the ends of justice.

10. It is not out of place to mention here that once the child in conflict is apprehended than as per Section 13 (1) of the JJ Act, the Probation Officer of the area has to be informed to prepare a Social Investigation Report as defined in Rule 2(xvii) of the Juvenile Justice (Care and Protection of Children) model Rules 2016. The said report plays a vital role for the inquiry to

be done by the Board and also for passing the orders to be passed qua the child in conflict under the JJ Act. This Social Investigation Report requires the Probation Officer to give the data or information regarding the relatives and family of the child, delinquency record of the family, their socioeconomic status, relationship amongst family members, living environment etc. In a way such report requires the Probation Officer to provide the history regarding mental and physical condition of the child coupled with the report regarding the habits and conduct of the child in neighbourhood, school, place of work etc. Besides the emotional, physical condition and also the intelligence of the child along with any contributing factor which in the opinion of the expert had contributed towards the child committing the said crime.

11. It is pertinent to mention here that this Court in ***Vishvas vs. State of Punjab, Law finder Doc id# 1808239*** has already discussed the relevance of the Social Investigation Report and directed the Juvenile Justice Boards to record reasons for declining bail and circumstances leading to such decisions and also emphasized that such decisions be founded on the basis of Social Investigation Report submitted by the Probation Officer and any other material available before it and not merely on the basis of the records of the case and the report filed under Section 173 Cr.P.C by the Investigating Officer. However, in the present case, neither the Board nor the Appellate Court have followed the instructions in this regard while passing the impugned orders.

12. Coming to the facts of the present case, in the light of the above decision, it is observed that in the orders impugned nothing has been discussed regarding any material coming before the Board or the Appellate Court to suggest there being reasonable grounds for believing that the petitioner is likely

to come into association of any known criminal if released on bail or that his release will expose him to moral, physical, or psychological danger nor they have taken the Social Investigation Report required under the Rules so as to base their decision declining bail on it.

13. Resultantly, considering the facts and circumstances of the case, the impugned orders are found to be not sustainable in the eyes of law and as such are liable to be set aside. As a consequent the present petition is allowed, after setting aside the order dated 30.05.2023 passed by the Juvenile Justice Board, Panchkula and also the order dated 13.06.2023 passed by the learned Appellate Court and the petitioner is directed to be released on bail subject to his furnishing bail bonds, surety bonds through his natural guardian or near relative to the satisfaction of the Principal Magistrate Juvenile Justice Board, Panchkula/Duty Magistrate of the concerned area.

14. However, anything observed herein above shall not be treated as an expression of opinion on merits of the case and is only meant for the purpose of decision of present petition.

07.10.2023

GYAN

(SANJIV BERRY)
JUDGE

1. Whether speaking/reasoned:	Yes/No
2. Whether reportable:	Yes/No