

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Sr. No.222

CRM-M-37946-2022

Date of Decision: 24.01.2023

Aakash

.... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. Parveen Chauhan, Advocate and
Mr. Chatur Singh, Advocate
for the petitioner.

Ms. Ankita Ahuja, AAG, Haryana.

TRIBHUVAN DAHIYA, J. (ORAL)

This is a petition under Section 439 Cr.P.C. seeking grant of regular bail to the petitioner in case FIR No.177 dated 20.08.2019, registered under Section 6 of POCSO Act, 2012, at Police Station Bajghera, District Gurugram.

2. Learned counsel for the petitioner contends that the petitioner is a juvenile, however, he has been ordered to be tried as an adult. He further submits that trial of the case is not progressing as the eye witness, who is victim's maternal uncle, has not been examined so far. Besides, neither the victim nor her mother has supported the prosecution in their testimonies before the Court.

3. Learned State counsel, upon instructions from ASI Inderesh, does not dispute the fact that the petitioner is a juvenile in conflict with law. She, however, states that trial of the case is going on, and three out of twenty

three witnesses have been examined, therefore, bail should not be granted.

The petitioner is in custody since 21.08.2019.

4. Grant of bail to juveniles is governed by provisions of Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2000, which reads as under:

12. Bail of juvenile.—

(1) When any person accused of a bailable or non-bailable offence, and apparently a juvenile, is arrested or detained or appears or is 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 institution of fit person] but he shall not be so released if there appear reasonable grounds 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.

(2) When such person having been arrested is not released on bail under sub-section (1) by the officer incharge of the police station, such officer shall cause him to be kept only in an observation home in the prescribed manner until he can be brought before a Board.

(3) When such person is not released on bail under sub-section (1) by the Board it shall, instead of committing him to prison, make an order sending him to an observation home or a place of safety for such period during the pendency of the inquiry regarding him as may be specified in the order.

5. A reading of the provision makes it apparent that a juvenile in conflict with law is entitled to grant of bail irrespective of the nature or gravity of the offence alleged to have been committed by him. Bail can only be declined when there are reasonable grounds for believing that his release is likely to bring him in association with any known criminal or expose him to moral, physical or psychological danger, or that his release would defeat the ends of justice. A reference in that regard can be made to the judgment of the Supreme Court in *Re Exploitation of Children in Orphanages in the State of Tamil Nadu v. Union of India and others*, (2020) 14 SCC 327.

6. The trial Court declined second bail application of the petitioner/juvenile in conflict with law, vide the order under challenge dated 27.04.2022, on the ground that after dismissal of his first bail application, there was no change in the circumstances. DNA report was also awaited. While declining the first bail application of the juvenile in conflict with law, the trial Court relied upon Social Investigation Report of Probation Officer, which suggested that the juvenile was vulnerable to physical, psychological or immoral danger, as his father was a drunkard and had left the juvenile and his mother, who was working as a maid. Therefore, there was nobody in the family to look after his activities and to take care of him. Further, reliance was placed on the opinion of a Clinical Psychologist, to the effect that the juvenile had mental and physical capacity to commit heinous offences. He

was able to understand the surroundings circumstances at the time of the alleged incident, and had developed traits of delinquency. Therefore, he was not entitled to be released on bail.

7. The aforementioned grounds for rejection of bail to the petitioner/juvenile in conflict with law, are not germane to the issue. Mere suggestion of vulnerability of the juvenile, in the opinion of a Probation Officer, to physical, psychological or immoral danger, as also opinion of the Clinical Psychologist regarding cognitive development of the juvenile, are alien to the requirements of Section 12 of the Act. The Probation Officer's report as also the Clinical Psychologist's opinion, are only observations about the juvenile's intelligence level and family circumstances. Being in the nature of professional advice/opinion, the same cannot afford reasonable ground for believing that the juvenile's release from custody is likely to bring him in association with any known criminal or expose him to physical, psychological or immoral danger. There has to be some material on record for believing that the juvenile's release will bring him in association with any known criminal or expose him to the dangers, as envisaged. In the present case, no such material has been pointed out or referred to by the trial Court, which can even *prima facie* afford a ground to so believe. It is also not the case that the juvenile's release from custody will defeat the ends of justice.

8. The petitioner's case accordingly does not fall in any of the exceptions carved out under Section 12 of the Act for declining bail, and he becomes entitled to it.

9. In view thereof, the petitioner/juvenile in conflict with law is ordered to be released on bail subject to furnishing of adequate bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate concerned.

10. Petition stands allowed.

(TRIBHUVAN DAHIYA)
JUDGE

24.01.2023
Maninder

Whether speaking/reasoned : Yes
Whether reportable : Yes