

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**280****CRR No.2651 of 2022 (O&M)****Reserved on : 12.09.2023****Date of Decision: 15.09.2023**

X (Child-in-Conflict-with-Law)

....Petitioner

VERSUS

State of Haryana

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Sunil Saharan, Advocate for the petitioner.

Ms. Priyanka Sadar, AAG Haryana.

ALKA SARIN, J.**CRM-46639-2022**

1. This is an application under Section 5 of the Limitation Act for condonation of delay of 185 days in filing the present petition.

2. For the reasons stated in the application, the same is allowed. The delay of 185 days in filing the present petition is condoned.

CRR No.2651 of 2022

3. The present revision petition has been filed challenging the orders dated 23.07.2021 and 27.10.2021 passed by the Principal Magistrate, Juvenile Justice Board, Hisar and Additional Sessions Judge, Hisar respectively, whereby application filed by the petitioner, who is a Child-in-Conflict-with-Law, for grant of bail under Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as the 'JJ Act') was dismissed.

4. The brief facts relevant to the present *lis* are that the complainant, Shiv Raj, filed an application on 24.03.2021 wherein he stated that he has three daughters and his youngest daughter aged 13 years (prosecutrix) was missing since 19.03.2021. They searched for her but could not find any trace of her. He expressed his suspicion that the Child-in-Conflict-with-Law (petitioner herein) had enticed away his daughter. On the basis of the said complaint, FIR No.213 dated 24.03.2021 was registered under Sections 344, 363, 366-A, 376(2)(n), 376(3), 376-D(A) and 450 of the Indian Penal Code, 1860; Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012; Section 75 of the Juvenile Justice (Care and Protection of Children) Act, 2015; and Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 at Police Station Sadar, Hisar. The girl was later recovered along with the Child-in-Conflict-with-Law (petitioner herein). The girl in her statement recorded under Section 164 CrPC stated that she had gone with the Child-in-Conflict-with-Law with her own sweet will as the Child-in-Conflict-with-Law had assured her of marriage and that he later made physical relations with her. The girl had further disclosed that her mother, namely, Smt. Ishrawati, had forced her to have sexual relations with one Rajpal at one time and on the asking of her mother the said Rajpal committed wrong act against her wishes. Thereafter, Section 376(2)(n), 376(3), 376(DA), 450 and 344 of IPC; Sections 4 and 6 of the POCSO Act, 2012; Section 75 of the JJ Act; and Section 3 of the SC/ST Act, 1989 were added. It has also come on the record that the prosecutrix had declined to get her medical examination done. On completion of investigation, report under Section 173 CrPC was presented. Vide order dated 10.09.2021 it was directed that the Child-in-Conflict-with-

Law be tried as an adult as per Section 18(3) of the JJ Act. The Child-in-Conflict-with-Law has been in an Observation Home for a period of over 02 years 02 months and 25 days as per affidavit dated 06.09.2023 of Bijender Singh, Additional Charge as Superintendent of Place of Safety, Madhuban (Karnal). The Child-in-Conflict-with-Law filed an application under Section 12 of the JJ Act for grant of bail. The Principal Magistrate, Juvenile Justice Board, Hisar vide order dated 23.07.2021 dismissed the application on the ground that there is an apprehension that he may come in contact with criminals and it will also defeat the ends of justice. An appeal was preferred against the said order dated 23.07.2021 before the Additional Sessions Judge, Hisar. The Additional Sessions Judge, Hisar while dismissing the application vide order dated 27.10.2021 held that the Child-in-Conflict-with-Law if released might pressurize the witnesses and, therefore, the release of the Child-in-Conflict-with-Law would defeat the ends of justice.

5. Learned counsel for the petitioner has contended that the petitioner being a Child-in-Conflict-with-Law is entitled to be released on bail under Section 12 of the JJ Act. Learned counsel for the petitioner has further contended that the Child-in-Conflict-with-Law has already been in an Observation Home for a period of 02 years 02 months and 25 days as on 06.09.2023. It is further the contention that the Courts below have not adverted to the Social Investigation Report and hence the orders of the Courts below are unsustainable in law.

6. Learned State counsel on instructions from ASI Nirmala Devi has contended that there are serious allegations against the Child-in-Conflict-with-Law and that releasing him on bail would defeat the ends of justice and he is likely to come in contact with criminals.

7. I have heard learned counsel for the parties.
8. This Court in 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.”

9. Learned State counsel has handed over a copy of the Social Investigation Report and the Social Background report. A perusal of the same reveals that the Child-in-Conflict-with-Law has cordial relations with his family. Regarding rehabilitation by the Probation Officer/Child Welfare Officer, it has been stated that the Child-in-Conflict-with-Law needs counseling and parental observation. The result of the inquiry as mentioned in the Social Investigation Report reads as under :

1.	Emotional Factors	Normal
2.	Physical condition	Normal
3.	Intelligence	Good

4.	Social and economic factors	Both Poor
5.	Suggestive causes of the problems	Teenage and poor group influence
6.	Analysis of the case, including reasons/contributing factors for the offence	Teenage and poor group influence
7.	Opinion of experts consulted	-
8.	Recommendation regarding rehabilitation by Probation Officer/ Child Welfare Officer	Needs counseling and parental observation.

10. 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.”

11. 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 Child-in-Conflict-with-Law 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 Child-in-Conflict-with-Law has already been in the Observation Home for over a period of 02 years 02 months and 25 days.

12. Keeping in view the above and the fact that there is no material on the record to bring the case of the Child-in-Conflict-with-Law within the purview of the proviso to Section 12(1) of the JJ Act. The impugned orders dated 23.07.2021 and 27.10.2021 passed by the Principal Magistrate, JJB, Hisar and Additional Sessions Judge, Hisar respectively, cannot be sustained in law and the same are accordingly set aside.

13. Without commenting on merits of the case, the Child-in-Conflict-with-Law 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.

14. It is further ordered that the Child-in-Conflict-with-Law 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 Child-in-Conflict-with-Law 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

15. 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.

16. 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.

17. Disposed off. Pending applications, if any, also stand disposed off.

(ALKA SARIN)
JUDGE

15.09.2023
jk

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