

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

222

**CRR No. 2749 of 2022
Date of Decision : 16.3.2023**

Mustkim

..... Petitioner

versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. Rajesh Bhateja, Advocate and
Mr. Farukh Abdullah, Advocate, for the petitioner(s)

Ms. Mahima Yashpal, DAG, Haryana

TRIBHUVAN DAHIYA J. (ORAL):

1. This is a revision petition challenging the order dated 13.10.2022 passed by the Principal Magistrate, Juvenile Justice Board, Gurugram, and the order dated 28.10.2022 passed by the Presiding Officer, Children's Court-cum-Additional Sessions Judge (Fast Track Special Court for the Offences under POCSO Act, 2012), Gurugram, whereby the petitioner/juvenile in conflict with law was declined bail in case FIR No.277 dated 6.7.2022 under Sections 363 IPC (Section 506 IPC and Section 6 of POCSO Act added later on), registered at Police Station Sector 9, Gurugram.

2. The petitioner undisputedly is a juvenile as he was born on 7.1.2006. 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 1[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.

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.

3. A perusal of the impugned orders show that bail to the petitioner/ juvenile in conflict with law has been declined by observing that the allegations levelled against the petitioner are serious in nature and the history given by the victim before the Medical Officer, during her medico legal examination, is consistent with the prosecution version. Admittedly, the juvenile/child-in-

conflict with law is in protective custody since 6.7.2022.

4. Therefore, it is apparent that relevant provisions to decline bail, as contained in Section 12 of the Act, were not considered while passing the impugned orders. There is no material on record to establish that on being released from custody the petitioner/juvenile in conflict with law is likely to come in association with any known criminal or will be exposed to any moral, physical or psychological danger. It is also not the case that his release would defeat the ends of justice. The petitioner's case, accordingly, does not fall in any of the exceptions carved out under Section 12 of the Act for declining bail to a juvenile in conflict with law, and he becomes entitled to grant of the same.

5. In view of the aforesaid, without going into the merits of the case, the present revision petition is allowed. The order dated 13.10.2022, passed by the Principal Magistrate, Juvenile Justice Board, Gurugram, and also the order dated 28.10.2022, passed by the Presiding Officer, Children's Court-cum-Additional Sessions Judge (Fast Track Special Court for the Offences under POCSO Act, 2012), Gurugram, are set aside, and petitioner/juvenile in conflict with law is ordered to be released on bail subject to furnishing of adequate bail bonds and surety bonds by his parents/guardian to the satisfaction of the Principal Magistrate, Juvenile Justice Board/Duty Magistrate, Gurugram.

6. Pending miscellaneous application(s), if any, stands disposed of accordingly.

(TRIBHUVAN DAHIYA)
JUDGE

16.3.2023

Ashwani

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No