

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

220

CRA-S No.3276 of 2023
Date of Decision: 05.12.2023

CCL 'AK' ... Appellant
Versus
State of Haryana and another ... Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Vijay Sangwan, Advocate,
for the appellant.

Mr. Arjun Lakhanpal, Addl. AG, Haryana,
for the respondent-State.

MANISHA BATRA, J.

1. The instant appeal has been filed by the appellant against the order dated 15.09.2023 passed by the Court of learned Additional Sessions Judge, Narnaul (Children Court) in case bearing FIR No.220 dated 25.07.2021 registered under Sections 376 (2) (n) and 506 of IPC at Police Station Sadar, Mohindergarh, whereby an application for grant of regular bail as filed by the appellant who is a juvenile in conflict with law had been dismissed.

2. Brief facts of the case relevant for the purpose of disposal of this appeal are that the aforementioned FIR had been registered on the basis of statement recorded by the complainant "P" (name withheld) alleging therein that her father and brother were lodged in jail in some other case and she along with her three brothers and two sisters was living with her mother. They had been doing labour work and had gone to Village Unchi Bhandor, District Mahendergarh for that purpose. She alleged that in April 2020, the appellant who was also working as a

Neutral Citation No.2023:PHHC:155443

labourer at the same time, induced her to accompany him and had taken her to the forest area of the village wherein he had committed rape upon her. Thereafter also, he had ravished her several times. On making resistance by the complainant, he had extended threats to kill her brothers and herself. He had taken her pictures and had been blackmailing her on the pretext of uploading those pictures on the facebook. She alleged that she had gone back to her native village but was followed by the appellant and two others namely, Ramesh and Pawan there also. The appellant had called her in the fields by extending threats to kill her and had again committed rape upon her whereas the co-accused Ramesh and Pawan had prepared a video. She apprised of this fact to her father and brother when they were released from jail. On the basis of her statement, a case was registered. Investigation proceedings were initiated. The appellant who is a juvenile was detained on 12.08.2021. After conducting usual formalities of the inquiry/investigation, challan report was presented against him before the Juvenile Justice Board and presently he is facing trial before the Children Court, Narnaul.

3. It is argued by learned counsel for the appellant that he has been falsely implicated in this case. Investigation has completed. Challan has been presented. Trial is likely to take time. In her sworn deposition as recorded before the Children Court, the prosecutrix has not implicated the appellant in the commission of the subject offences. No useful purpose would be served by detaining him any further. Hence, it is argued that he deserves to be given concession of bail.

4. Notice of the appeal was issued to the respondent No.2-prosecutrix. She did not appear to contest the appeal.

Neutral Citation No.2023:PHHC:155443

5. It is argued by learned State counsel that there are serious and specific allegations against the appellant. There is nothing to show that there would be any undue delay in conclusion of the trial. Therefore, it is argued that the appeal does not deserve to be allowed.

6. I have considered submissions of both the sides and have perused the record carefully.

7. It is not in dispute that the appellant is a child in conflict with law and at the time of commission of the subject crime, he was below 18 years. He has been booked for commission of offence punishable under Section 376 (2) (n) of IPC for committing rape upon the victim who is not a child. There is no doubt that offence of rape is a heinous crime. However, it cannot be ignored that Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (For short “Act, 2015”) contains a mandate to release a child in conflict with law on bail, when he is apprehended or detained in connection with an offence. Even if a juvenile is to be tried as an adult, still his plea for bail is to be considered under the parameteres provided under Section 12 of the Act, 2015 which are clearly distinguishable from the application filed under Section 439 of Cr.P.C. Reliance in this regard can be placed upon the case cited as **CCL ‘A’ v. State (NCT of Delhi)**, 2021 CriLJ 1251, wherein similar view was taken by the High Court of Delhi.

8. The rule in Section 12 of the Act, 2015 sanctioning bail universal to every child in conflict with law presupposes that there is a prima facie case against him in the assessment of the Board or the Court based on the evidence placed at that stage. It is where a case against a child in conflict

Neutral Citation No.2023:PHHC:155443

with law is prima facie made out that the rule in Section 12 (1) of the Act, 2015 that sanctions bail as a rule, except the three categories contemplated by the proviso comes into play. These three categories are that there is reasonable ground for believing that the release is likely to bring the child into association with any known criminal, or; that it will expose him to moral, physical or psychological danger, or; that his release defeats the ends of justice. In this regard, reference can be made to **Dr. Subramanian Swamy and others v. Raju**, 2014 (86) ACC 637, wherein similar observations were made.

9. No doubt, Section 15 of the Act, 2015 provides for transfer of a juvenile to the Children Court for trial as an adult where the child has attained the age of 16 years and has been alleged to have committed heinous offence as is done in this case. However, it is also pertinent to mention that Section 12 of the Act, 2015 has not been amended so far as the parameters and yardsticks for granting bail to the juvenile are concerned. Therefore, while rejecting the bail application of a juvenile, it cannot be the criteria that the alleged offence is of serious and heinous nature and his bail can be rejected only if the Court comes to a conclusion that release of bail will adversely affect the interest of the juvenile. In this case, there appears to be nothing on record showing that there is any moral, physical or psychological danger to the appellant juvenile, if he is released on bail, nor there is any possibility that he will come in the company of any known criminal nor there is any reason to conclude that his release on bail will defeat the ends of justice. Rather it has come on record that the victim, while appearing before the learned Children Court has not implicated the appellant in the

Neutral Citation No.2023:PHHC:155443

commission of the subject offences and is shown to have stated that some unknown youths used to tease her and had tried to snatch their ornaments. She has denied that the appellant had committed rape upon her, had captured her photographs or had uploaded the same on facebook. As such, in the considered opinion of this Court, the rejection of bail by the Children Court is inappropriate and the order of rejection suffers from material irregularity and illegality. The Children Court is not shown to have exercised the jurisdiction vested in it keeping in view the object of the Act, 2015. Therefore, finding the impugned order to be unsustainable, the same is set aside.

10. As per the discussion as made above, the appeal is allowed and the appellant is ordered to be released on bail and he be given in the custody of his mother guardian namely, Meshari Devi, on her filing personal bonds and two sureties of the like amount to the satisfaction of the Court concerned with the undertaking that the mother shall keep the juvenile away from unsocial and criminal elements, will look after his health, keeping his mental and social status. She will also give an undertaking that on being released on bail, she will ensure his presence during trial before the Court concerned whenever so required.

11. Office is directed to transmit certified copy of this order to the Court concerned for information and necessary compliance.

05.12.2023
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(MANISHA BATRA)
JUDGE

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