

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRR-2913-2022

Date of Decision: 20.03.2023

Vansh

.... Petitioner

Versus

State of Haryana

.... Respondent

CORAM: HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: - Mr. Namit Khurana and Mr. Abhinav Kalia, Advocates
for the petitioner.

Mr. Gaurav Bansal, Assistant Advocate General, Haryana.

ASHOK KUMAR VERMA, J. (ORAL)

Challenge in the present petition is to the order dated 22.09.2022 passed by learned Addl. Sessions Judge (Fast Track Special Court under POCSO Act), Yamuna Nagar at Jagadhri, whereby appeal filed by the petitioner against the order dated 05.09.2022 rendered by the learned Principal Magistrate, Juvenile Justice Board, Yamuna Nagar, dismissing the bail application of the petitioner (child-in-conflict with law) in case FIR No. 177 dated 03.08.2022 registered under Section 6 of the Protection of Children from Sexual Offences Act, 2012 (for short-'the Act') at Police Station Buria, was dismissed.

Brief facts necessary for decision of the present revision are

that the aforesaid FIR was got registered against the petitioner on the statement of complainant-Poonam wife of Ravin Kumar, to the effect that she is resident of Sugh Majri and has two sons. Name of elder son is Radhe aged around 6 years and the name of younger son is Nitin aged around 4 years. On 03.08.2022 at around 7:30 P.M. her elder son Radhe told to his parents that he is suffering pain on his body part of latrine. On checking, the complainant found a wound on his anus. The victim narrated the whole incident to his grandmother. On asking, he disclosed to the complainant that the petitioner had committed immoral act with him in Dharamshala. During the course of investigation, medical examinations of the victim as well as the petitioner were got conducted and as per medical opinion of the MLR of the victim, possibility of sexual assault was found. As per medical opinion of the MLR of the petitioner, he was found capable of performing sexual intercourse. The petitioner was arrested. The petitioner was found to be a juvenile and his case was referred to the Juvenile Justice Board, Yamuna Nagar. The bail application filed by the petitioner was dismissed by the learned Principal Magistrate, Juvenile Justice Board, Yamuna Nagar vide order dated 05.09.2022. The appeal preferred by the petitioner against the aforesaid order was also dismissed by the Appellate Court vide impugned order dated 22.09.2022. Hence, the present revision.

Learned counsel for the petitioner submits that the petitioner was a juvenile on the date of the alleged occurrence i.e. 03.08.2022 and he was found about 12 years and 05 months, as such he was below 15 years of age on the relevant date and that the petitioner ought to have

been dealt with under Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015. He further submits that despite issuance of direction by this Court vide order dated 28.02.2023, the victim is not appearing before the trial Court for recording his statement. Maximum sentenced awarded to the petitioner is imprisonment for 03 years, because he is below 15 years of age at the time of alleged occurrence. The petitioner is in custody since 12.08.2022. Conclusion of trial would take sufficient long time. No useful purpose will be served by further detention of the petitioner in custody.

On the other hand, learned State counsel vehemently opposed the prayer made in this petition. Learned counsel for the State submits that the allegations levelled against the petitioner are heinous in nature, therefore, he is not entitled to grant of regular bail.

I have heard the learned counsel for the parties.

There is no denying the fact that as on the date of occurrence, the petitioner was juvenile. Thus, while dealing with the bail petition of the petitioner, the mandate of Section 12 of the Act, is required to be followed. Section 12 of the Act would read as under:-

“12. (1) When any person, who is apparently a child and is alleged to have committed a bailable or nonbailable 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 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 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. Apprehension of child alleged to be in conflict with law. Role of person in whose charge child in conflict with law is placed.

(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.”

A perusal thereof would show that the conditions for denial of the bail to the juvenile are stipulated under the proviso to Section 12 (1) of the Act. The reasoning given by the Juvenile Justice Board that if the petitioner is released on bail, he would be exposed to moral, physical and psychological danger is not attracted.

More so, despite issuance of directions by this Court vide order dated 28.02.2023, the victim is not coming forward for recording his statement. There is no material or circumstance on record to hold that if released on bail, the petitioner would come into contact with the known criminals. The reasoning of the Board that it would expose the petitioner to the psychological danger does also not seem to be emanating from the given circumstances. The FIR was registered on 03.08.2022 and the petitioner has been in protective custody since 12.08.2022.

In view of the above, the present petition is allowed. The orders dated 22.09.2022 and 05.09.2022 passed by the Courts below, qua denying the petitioner regular bail, are set aside. The petitioner is ordered to be released on bail to the satisfaction of the learned trial Court/Duty Magistrate.

Any observation made here-in-above is neither an expression of opinion on the merits of the case nor shall the trial Court advert to these comments.

March 20, 2023
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(ASHOK KUMAR VERMA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No