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IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

244

CRA-S-257-2024 (O&M)
Date of decision: 07.05.2024

Mxxx

...Appellant

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Sarfaraj Hussain, Advocate
for the appellant.

Mr. Neeraj Poswal, AAG, Haryana.

Mr. Tushar Gautam, Advocate
for respondent No. 2.

MANISHA BATRA, J. (Oral)

1. The appellant, who is a child in conflict with law (*hereinafter to be referred as 'CCL'*), has filed the present appeal under Section 14-A (2) of the Scheduled Castes and Scheduled Tribes (Prevention of atrocity) Act, 1989 (*for short 'the SC/ST Act'*) challenging the order dated 13.10.2023 passed by the Court of learned Additional Sessions Judge (Fast Track Special Court for trial of offences under POCSO Act)-cum-Children Court, Nuh in case arising out of FIR No. 187 dated 28.04.2023, registered under Sections 363, 366-A, 506 of IPC, Section 3 of SC/ST Act and Section 6, 17 of the Protection of Children from Sexual Offences Act, 2012 (*for short 'POCSO Act'*) at Police Station Sadar Tauru, whereby the application for grant of

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regular bail to the CCL, as filed under Section 12 of the Juvenile Justice Act, 2015 (*for short 'Act, 2015'*) had been dismissed.

2. Brief facts of the case relevant for the disposal of the present appeal are that on 28.04.2023, a complaint was moved by the complainant 'K' (*name withheld*), who belonged to scheduled caste, alleging therein that the victim 'M' (*name withheld*), who was his minor daughter, aged about 16 years, had gone missing on the intervening night of 26/27.04.2023. He alleged that he had a strong suspicion that the CCL had kidnapped his daughter as two days back, he was seen wandering near his house and on asking the reason about his presence, he had hurled abuses to the complainant by making remarks based on his caste. While suspecting that the CCL had hand in her daughter having gone missing, he went to the house of the CCL, wherein co-accused Sarif, Sohail, Sahil, Jaibun and Saira, who are family members of CCL, were present and on asking them about the whereabouts of the victim, they were enraged and while proclaiming that they had got his daughter kidnapped through CCL for selling her in Bihar and while extending threats to kill her family members and himself and to set his house on fire, if he disclosed about the incident to anybody, they also insulted him in the name of his caste. He also disclosed that the CCL and his family members were having criminal antecedents. He further disclosed that he had got his daughter back on 27.04.2023 and had come to report the matter to the police on 28.04.2023 as she was quite scared till then. On his complaint, the aforementioned case was registered under Section 363, 366-A and 506 of IPC and Section 3 of SC/ST Act. Investigation proceedings were initiated. On 28.04.2023, the victim was produced before the police by her family members. Her medical

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examination was conducted. Her statement under Section 164 of Cr.P.C. was recorded, wherein she disclosed that she had been taken away from her house on the fateful night by the CCL and co-accused Sarif and had been ravished by the CCL. The CCL was taken into protective detention on 08.05.2023. His medical examination was also conducted. Inquiry report qua him was submitted before the Juvenile Justice Board and then vide order dated 05.10.2023, as passed by the Principal Magistrate, Juvenile Justice Board, he was sent to the Children Court/Fast Track Court under POCSO Act for being tried as adult. He moved an application for grant of regular bail, which had been dismissed by the Children Court by passing the impugned order.

3. Feeling aggrieved from the order dated 13.10.2023, the present appeal has been filed on the grounds and it is argued by learned counsel for the appellant that he is in detention since 08.05.2023. He has been falsely implicated in this case. There was delay of 02 days in registration of the FIR, which has not been satisfactorily explained. The victim did not raise any hue and cry when she was allegedly kidnapped. The FIR was silent with regard to the manner and circumstances, in which, the victim was recovered. The medico-legal report of the victim showed that no external injury was found on her person. The trial Court, while rejecting the application of the appellant for grant of regular bail, ignored the well settled proposition of law that the provisions of Section 12 of Act, 2015 were mandatory in nature and the same were applicable to the instant case. It is argued that Section 12 of the Act, 2015 contemplates release of a juvenile on bail notwithstanding anything contained in the provisions of Cr.P.C. and simply because of the fact that he has been ordered to be tried as adult, his claim for release on bail cannot be

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declined as he would nonetheless be considered as a child in conflict with law. To fortify his argument, learned counsel for the appellant has placed reliance upon the judgment rendered by a coordinate Bench of this Court in ***CRA-S-149-2003***, titled as ***Sachin @ Suraj vs. State of Haryana***, decided on 12.07.2023. It is also argued that the trial is likely to take time as there is a long list of witnesses to be examined. Therefore, it is argued that the impugned order is liable to be set aside, the appeal deserves to be accepted and the appellant deserves to be extended benefit of regular bail.

4. The respondent-State has filed status report in this case submitting that the appellant was detained in this case on 08.05.2023 after collecting sufficient evidence against him. He suffered disclosure statement admitting his involvement in the kidnapping the victim and then ravishing her. He has been directed to be tried as an adult by the Juvenile Justice Board and is being tried as such. In her statement recorded under Section 164 of Cr.P.C., the victim had named the CCL and co-accused Sarif as the persons, who had forcibly taken her away from her house to some unknown place, wherein co-accused Sahil was also present and they had committed rape upon her and had also burnt her. In her sworn deposition recorded before the trial Court, she has implicated the appellant in the subject offences. As per FSL report, human semen was detected on the clothing and vaginal swabs of the victim. DNA report is awaited. There are serious and specific allegations against the appellant. There are chances of his intimidating other material witnesses of the case or absconding, if extended benefit of bail. The trial Court had discussed the provisions of Section 12 of the Act, 2015 and had declined the grant of bail to the CCL by observing that his release on bail would defeat the ends of

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justice. Therefore, it is argued that there is no infirmity or illegality in the impugned order and the present appeal is liable to be dismissed.

5. I have heard learned counsel for the parties at considerable and have also gone through the record carefully.

6. There can be dispute about the fact that even when a child in conflict with law is sent up for trial as adult before the Children Court, the child still remains juvenile and cannot be denied benefit of Section 12 of the Act, 2015 as observed in *Sachin*'s case (supra). However, the moot question, which falls for consideration before this Court in the present appeal filed under Section 101 of Act, 2015, is with regard to the fact as to whether the order passed by the Children Court while rejecting the bail application of the appellant, is within the four corners of Section 12 of the Act, 2015 ? This section postulates rule of grant of bail for every child in conflict with law, who is alleged to have committed a bailable or non-bailable offence, if he/she is apprehended or detained by the police and is being produced before the Board. Such child has to be released on bail with or without surety. Further, as per proviso to this section, such child shall not be released if there appear to be reasonable grounds for believing that his/her 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.

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7. From a bare reading of the provision of Section 12 of the Act, 2015, it appears that the intention of the legislature was to grant bail to a juvenile in conflict with law irrespective of the nature or gravity of the offence alleged to have been committed by him and the same can be declined only in cases where reasonable grounds are there 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. Reference in this regard can also be made to **Shiv Kumar @ Sadhu Vs. State of U.P. 2010 (1) ACC 616**, wherein it was observed that gravity of the offence has not been mentioned as a ground for rejection of bail under Section 12 of the Juvenile Justice Act, 2015. Similar observations have been made by other Co-ordinate Benches of this Court in **Krishan Kumar Vs State of Haryana 2020 (2) RCR (criminal) 342**, **Vishal Vs State of Haryana 2020 (4) RCR (criminal) 475** and **CRR No.962-2020** titled as **Sanjeet Vs State of Haryana decided on 02.07.2020** by holding that for invoking the exceptions of Section 12 of the Juvenile Justice Act, 2015, as culled out for declining bail to a juvenile in conflict with law, there has to be some material before the competent authority on the basis of which, it can be said that the release of the juvenile would fall within the exceptions recognized under Section 12 of the Juvenile Justice Act, 2015 and that the seriousness of offence as mentioned in the FIR would not be a ground to deny to the juvenile concession of bail.

8. Now coming to the case in hand, the main argument as raised by learned counsel for the appellant CCL is that the provisions of Section 12 the Act, 2015, which are mandatory in nature, have not been properly taken into

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consideration by the trial Court while dismissing the application of the appellant for grant of bail. In the instant case, the victim has since been examined. In her statement recorded under Section 164 of Cr.P.C. as well as in the sworn deposition recorded before the Children Court, she is shown to have deposed that the present appellant along with one more person Sarif had forcibly taken her out of the house of her lawful guardian on the intervening night of 26/27.04.2023 and act of gang rape/aggravated penetrative sexual assault was committed upon her turn by turn. The trial Court, while declining the plea of the appellant for bail, had relied upon a decision given by High Court of Allahabad in ***Mr. X (minor) vs. State of U. P. and another***, decided on 21.10.2022 in CRM No. 1036 of 2022, wherein it was observed that the scheme of the Act, 2015 takes into consideration the nature of the offence as well and the powers under the provisions of the Act, 2015 are to be exercised not only while taking into consideration the best interest of the child in conflict with law but also the concern of the victim's family and larger interest of the society. The trial Court had observed that the release of the appellant CCL would defeat the ends of justice. On going through the nature of allegations as levelled against the appellant, the fact that the victim has fully supported the version of the prosecution in her sworn deposition, coupled with the fact that the DNA report is awaited and other material witnesses are still to be examined, I am of the considered opinion that the learned trial Court had rightly observed that the release of the appellant would defeat the ends of justice. As such, no illegality much less infirmity can be stated to have been found in the impugned order, passed by the Children Court, which is a

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well-reasoned order. Therefore, it is held that the appeal does not deserve to be allowed. Accordingly, finding no merit, the same is dismissed.

07.05.2024

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

Yes