

Neutral Citation No. 2024:PHHC:079217

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

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CRR No. 130 of 2024 (O&M)
Date of decision: 31.05.2024

Cxxx@n ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Prateek Singh, Advocate
for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

MANISHA BATRA, J. (Oral)

1. The present revision petition has been filed against the order dated 03.10.2023, passed by the learned Principal Judge, Juvenile Justice Board, Panchkula (*for short 'the Board'*), whereby an application, filed by the petitioner who was a juvenile in conflict with law (*for short 'CCL'*) for grant of regular bail in case FIR No. 212 dated 20.05.2023, registered under Section 6 of the POCOS Act, 2012 at Police Station Chandimandir, Panchkula, had been dismissed as well as against the order dated 14.11.2023, passed by the learned Additional Sessions Judge, Panchkula, whereby the appeal filed by the petitioner against the order of the Board had also been dismissed.
- 2.. Brief facts of the case relevant for the disposal of the present revision petition are that on 16.05.2023, an information was received regarding a male fetus having been found in the dustbin of girls toilet of the

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Govt. School at Ramgarh. On receipt of this information, a case under Section 318 of IPC was registered. Investigation proceedings were initiated. During the course of investigation, the victim was called at Civil Hospital for getting her medico-legal examination conducted. Her counseling was got done by a legal aid advocate. Thereafter, she recorded her statement to the effect that in August, 2022, she had voluntarily established physical relations with accused Vipin, who was her friend. On 15.05.2023, she was attending her school when she felt a strong urge to urinate and when she went into the toilet of the school, she delivered a child. As there was no movement in the child and as she had become very scared, therefore, she threw the child in the dustbin. She was not aware about her pregnancy. After registration of FIR, investigation proceedings were initiated. Her statement under Section 164 of Cr.P.C. was recorded, wherein she disclosed that accused Vipin, who was her cousin brother, had forcibly established physical relations with her for the first time in the year 2021 and then had committed rape upon her in June, 2022 as well, when she had gone to her village. Thereafter, the present petitioner 'C' (*name withheld*), who is residing in her neighbourhood, told her that accused Vipin had sent her photographs and videos to him and by giving threats to make those photographs and videos viral, he had pressurized her to establish physical relations with her and then committed rape upon her in August, 2022 and thereafter, she had delivered a child in the washroom of her school on 15.05.2023. The petitioner, who is a juvenile with conflict in law, was detained and was produced before the Board and was sent to observation home. After completion of enquiry, report has been submitted and presently,

the petitioner is facing enquiry and the case is fixed for producing prosecution evidence.

3. The petitioner had moved an application for grant of regular bail before the Board, which had been dismissed, vide order dated 03.10.2023. Feeling aggrieved from the said order, he had filed an appeal before the Court of learned Additional Sessions Judge, Panchkula, which too had been dismissed. Dissatisfied from the orders, passed by the Board as well as by learned Additional Sessions Judge, Panchkula, the present revision petition has been filed.

4. It is argued by learned counsel for the petitioner that the petitioner has been falsely implicated in this case. He was not named in the FIR. His name had been introduced in the statement of the victim later on in order to save the accused Vipin, who is her cousin brother. No photographs or videos have been recovered from the petitioner as alleged by the victim. The trial is likely to take time. There are no chances of his intimidating the witnesses or absconding. The Board as well as the appellate Court committed grave error in rejecting the plea of the petitioner for regular bail as while passing the impugned orders, the well settled proposition of law that the provisions of Section 12 of the Juvenile Justice Board Act, 2015 (*for short '2015 Act'*), which are mandatory in nature, had been ignored. The petitioner, being a juvenile, is entitled to be released on bail notwithstanding anything contained in the provisions of Cr.P.C. Therefore, it is argued that the impugned orders are liable to be set aside; the petition deserves to be accepted and the petitioner deserves to be released on bail.

5. Status report has been filed by the respondent-State in the matter submitting therein that the victim had mentioned two persons, who had committed the acts of aggravated penetrative sexual assault upon her. The petitioner, by extending threats to make her photographs and videos viral, had committed the act of aggravated penetrative sexual assault upon her in August 2022, thereby impregnating her and fetus had come out of her womb on 15.05.2023, while she had gone to washroom of her school. RFSL report has been received. However, DNA report is still awaited. The victim and her mother have since been examined and they have supported the case of the prosecution. It is admitted that no photographs or videos pertaining to the victim have been recovered from the petitioner but it is submitted that the allegations against him are serious in nature and his release might defeat the ends of justice. Therefore, it is argued by learned State counsel that there is no infirmity or illegality in the impugned orders and it is urged that the present petition is liable to be dismissed.

6. I have heard learned counsel for the parties at considerable length and have also gone through the material placed on record.

7. Section 12 of the 2015 Act postulates rule for grant of bail to 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.

8. 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.

9. Now coming to facts of the case in hand. The allegations against the petitioner are that on the pretext of making objectionable videos and photographs of the victim qua her relationship with accused Vipin viral, the petitioner had committed the act of aggravated penetrative sexual assault upon her. No doubt, the petitioner was not named in the FIR and the victim revealed his name and made allegations qua her being subjected to rape at his hands in her statement recorded under Section 164 of Cr.P.C. However, the DNA report is still awaited. It is well settled proposition of law that the scheme of 2015, Act 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. Reliance in this regard can be placed upon a judgment of Allahabad High Court in ***Mr. X (minor) vs. State of U. P. and another : 2022 Live Law (AB) 474.***

10. Learned Principal Judge, Juvenile Justice Board, Panchkula, while dismissing the application for grant of bail to the petitioner, had observed that there was likelihood of the petitioner indulging in such type of offences again and qua his being exposed to physical, moral and psychological dangers. Learned Additional Sessions Judge, Panchkula, while deciding the appeal of the petitioner, had observed that the interest of the petitioner could not prevail over the interest of the victim. Keeping in view the nature of allegations, which have been levelled against the petitioner,

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coupled with the fact that the victim and her mother have supported the case of the prosecution by reiterating the allegations as levelled against the petitioner and the DNA report is still awaited, I am of the considered opinion that though as observed by the Board that there is not material on record to show that the release of the petitioner is likely to expose him to any moral, physical and psychological dangers but his release would certainly defeat the ends of justice. As such, no illegality much less infirmity can be stated to have been found in the impugned orders, which are well-reasoned orders. Therefore, it is held that the revision petition does not deserve to be allowed and the petitioner does not deserve to be released on bail at this stage. Accordingly, the petition is dismissed.

31.05.2024

Waseem Ansari

(MANISHA BATRA)

JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>Yes</i>