

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

224

CRM-M-6614-2023 (O&M)

Date of decision: 16.04.2024

‘D’ through his Natural Guardian

...Petitioner

V/s

State of Haryana

...Respondent

CORAM: HON’BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Paramjeet Phor, Advocate for the petitioner.

Ms. Priyanka Sadar, AAG Haryana.

SUMEET GOEL, J. (Oral)

CRM-12876-2024

For the reasons stated in the application and in view of submission made by learned counsel for the applicant-petitioner, the application in hand is allowed as prayed for, subject to just exceptions. Document appended as Annexure P-4 is taken on record. Registry is directed to tag the same at the appropriate place.

CRM-M-6614-2023

1. Present petition has been filed under Section 439 Cr.P.C. r/w Section 12 of the Juvenile Justice (Care & Protection of Children) Act, 2015 for grant of regular bail to the petitioner in case bearing FIR No.27 dated 13.02.2021, registered for the offences punishable under Sections 376(2)(n) of IPC and Section 6 of the Protection of Children From Sexual Offence Act, 2012, Section 323 and 506 of IPC (added later on) at Police Station Sector 53, District Gurugram (Haryana).

2. On 30.11.2023, the following order was passed:-

“This is a petition under Section 439 of the Code of Criminal Procedure, 1973 read with Section 12 of The Juvenile Justice (Care & Protection of

Children) Act, 2015 (For short, 'JJ Act') for grant of regular bail to the petitioner in FIR No.27 dated 13.02.2021 under Section 376(2)(n) of the Indian Penal Code, 1860 (IPC) and Section 6 of the Protection of Children from Sexual Offences Act, 2012 and Sections 323, 506 IPC added later on.

The FIR in the present case was registered on the statement of the victim. The allegations in the FIR are reproduced hereinbelow as taken from the order dated 11.01.2023 passed by the Children's Court-cum-Additional Sessions Judge, Fast Track Special Court, Gurugram:

*"Shorn of unnecessary details, the brief facts of the prosecution case are that on 13.02.2021 a ZERO F.I.R. bearing No.001 dated 04.02.2021 under Sections 376 I.P.C. and 4 P.O.C.S.O. Act, 2012 registered at P.S. Baba Nihal Vihar, Delhi, received to the Police Station Sector 53, Gurugram and the complaint was moved by complainant/girl child, aged 17 years (**** name withheld and hereinafter referred to as victim) alleging therein that she has been residing at Delhi (**** house number, name of colony and location withheld) along with her Chacha-Chachi and was carrying out the studies of 12th Class in some School (****location of School withheld). She alleged that in August 2019, her classmate 'P' introduced her muhbola brother Deepak Punia (hereinafter referred to as an accused) to her while stating that he would help her in the Economics subject as she was facing problem in understanding that subject. She alleged that she talked with accused, upon which accused asked her to collect the notes of Economics from the house of 'P' where he was supposed to visit within 3-4 days, but instead of vising (sic) her house he visited the Park situated opposite to the School of victim in Ambika Vihar and telephonically asked her to collect the notes from him. She alleged that when victim met accused then accused informed her that he had forgotten the notes at his room in Gurugram and tried to induce her to accompany him to his room at Gurugram but she did not accompany him. Thereafter, accused told her that notes would help her in her 12th Board and tried to stop her at Park however, she came back to her home. She alleged that accused kept on calling her telephonically at Gurugram and in the meanwhile, in the exams of September, 2019 she secured less marks in Economics. She alleged that on 26.09.2019 accused called victim at HUDA City Center, Metro Station for giving Notes and victim went there, however, accused told her that notes were kept at hotel and she would accompany him to hotel. She went along with accused at a Hotel in Wazirabad Village Gurugram and got her*

wrong name registered in the entry of Hotel and when she enquired the reason accused told her it was merely a formality otherwise they would not let them in room and asked her to come to the room where notes were kept. She alleged that after going to the room accused asked her to sit then he bolted the door of the room from inside and when she resisted he gave beatings to her and forcefully removed her clothes and thereafter clicked her nude photos. She alleged that accused forcibly touched her private parts and inserted his finger in her private parts then pressed her breast and when she raise noise then accused left her while criminally intimidating her that if she disclose this incident to anyone then he would upload her photograph and video on social media. She got scared and did not tell anything to anyone. She alleged that thereafter accused kept on threatening her on telephone regularly. She alleged that on 20th January, accused took her in a Hotel room where also he sexually assaulted her, forcibly disrobed her and also put finger in her private parts and on her raising noise he got frightened and let her go while criminally intimidating her to defame her. She alleged that during lockdown also accused used to force her to meet him and ask her to herself nude on his video call and she did what accused has told and accused recorded her nude video. She alleged that accused telephonically called her on 24.12.2020 and took her to the same Hotel in Gurugram without making any entry at this time to a room which number she did not remember. She alleged that on the same day Amit came there who was the cousin of accused and Amit beat her and threatened her to do the same as directed otherwise they would upload her photos and videos on social media and thereafter Amit left from there. She alleged that thereafter accused tried to rape her while criminally intimidating her but she repeatedly resisted and started crying upon which accused tried to pressed her neck due to which she received marks on her neck and when she reached her home then her mother enquired from her about the marks on her neck upon which she told that there was allergy on her neck. She alleged that accused kept on threatening her telephonically and forcing her to talk with him but she stopped picking his calls then accused started calling her friends. She alleged that she changed her SIM Card but again her number was revealed to him by 'P' as she was taking online classes and accused again started calling her telephonically. She alleged that mother of accused was Teacher in the school of victim and she herself assisted her son by telling her Class Teacher to tell the victim to talk with accused and one

Mahak had disclosed the above said facts to her She alleged that she stopped taking the calls of accused and he started calling her from different numbers, from the phone numbers of her Tuition Teacher, Class Teacher and Chacha. She alleged that when her Chacha and Mama talked about his misconduct to his parents then they also extended a threat to upload the obscene photos and videos of victim on the Internet and supported the act of accused due to which she is scared as accused was sending her threatening messages. She prayed for taking legal action against the culprit. On the basis of the above said complaint, a preliminary inquiry was conducted, OYO Hotel was visited at the instance of complainant, she was subject to medical examination wherein victim had refused for her medico-legal examination and a zero F.I.R. for the offences punishable under Sections 376 IPC and 6 of POCSO Act, 2012 was registered by Delhi Police. As the occurrence was of Village Wazirabad, Sector-53, Gurugram on the basis of the above said Zero F.I.R a separate F.I.R. was registered at Gurugram."

On 16.02.2021, after investigation, the Child-in-Conflict-with- Law was arrested as a regular accused. During interrogation, it was disclosed that the petitioner is a juvenile. On an application filed on behalf of the Child-in-Conflict-with-Law he was declared a juvenile on the date of occurrence vide order dated 08.11.2021. The Child-in-Conflict-with-Law was ordered to be tried as an adult vide order dated 31.03.2022.

Learned counsel for the petitioner would contend that there are no dates coming forth in the FIR and that there is a considerable delay in lodging the FIR itself. The learned counsel would further contend that the prosecution witnesses are not coming forward and the trial is being delayed on account of the same. The learned counsel has further contended that the Social Investigation Report has not even been considered while denying bail to the petitioner under Section 12 of the JJ Act.

Learned counsel for the State has handed over the Social Investigation Report. It is contended that the petitioner cannot be granted bail under Section 12 of the JJ Act in as much as he has attained the age of 21 years. It is further the contention that there are serious allegations against the petitioner and that the ends of justice would be defeated if the petitioner is granted bail.

Heard learned counsel for the parties.

The admitted position in the present case is that the Child-in-Conflict-with-Law was a juvenile at the time of occurrence. The FIR was lodged in the year 2021, though the incidents relate to the years 2019 and

2020. The result of the inquiry of in the Social Investigation Report reads as under:

"RESULT OF INQUIRY

- 1 Emotional factors.....emotionally stable*
- 2. Physical conditionNormal*
- 3 IntelligenceAverage*
- 4. Social and economic factors and economic status.... Lower social and economic status.....*
- 5 Suggestive causes of the problems.....child was in Romantic Relationship*
- 6. Analysis of the case, including reasons/contributing factors for the offence.... Do*
- 7. Opinion of experts consultedNil*
- 8. Recommendation regarding rehabilitation by Probation Officer/child Welfare officer*
.....Considering all the facts, circumstances and social investigation rehabilitation the child being Juvenile his all life is stable So I think child need a chance to Reform."

There is nothing in the report which would bring the case of the Child-in-Conflict-with-Law under the proviso to Section 12 of the JJ Act. The question whether the petitioner can be granted bail under Section 12 of the JJ Act is pending before the Supreme Court in the case of Master Bholu (Imaginary Name) vs. Central Bureau of Investigation & Anr., Petition(s) for Special Leave to Appeal (Crl.) No.8691/2021. In the present case, the zimni orders appended with the petition reveal that the prosecution witnesses are not coming forward to get their statements recorded. The trial has been going on since February 2021.

Considering the fact that the petitioner has been in the Observation Home for a period of over two years and the fact that the prosecution witnesses are not coming forward and further that the trial is being delayed, this Court is inclined to grant indulgence to the petitioner by way of interim bail. The petitioner be released on bail on such terms and conditions as may be imposed by the Sessions Judge, Gurugram. It is further specifically directed that the petitioner shall continuously remain under the supervision of the Probation Officer or any other person fit for the purpose as may be appointed by the Sessions Judge, Gurugram in that regard. The petitioner and his family members would not create any hindrance in the proper progression of the trial and would not, in any manner, contact or communicate with any of the witnesses. In case of any adverse conduct on the part of the petitioner, the Probation Officer or the person appointed by the Sessions Judge, Gurugram would give a report in

this regard to the Sessions Judge, Gurugram who would then forward the same to this Court along with his comments.

List on 04.03.2024.

It is made clear that the pendency of the present petition shall in no manner be treated as an impediment in the continuation of the proceedings before the Court concerned.”

3. Learned State counsel has opposed the present petition by arguing that the allegations raised are serious in nature and thus the petitioner does not deserve the concession of the regular bail. Learned State counsel seeks to place on record custody certificate dated 15.04.2024 in Court, which is taken on record.

4. I have heard counsel for the parties and have gone through the available records of the case.

5. It is not in dispute that the petitioner is continuing on interim regular bail since 30.11.2023 & there has been no allegation against the petitioner having misused the said concession of interim regular bail. It would be apposite to refer herein to a judgment of this Court passed in **CRR-2876-2023** titled as **Jatin vs. State of Haryana**, decided on 30.01.2024; relevant whereof reads as under:-

“10. As an epilogue to above discussion the principles of law that emerge are as follows:

(I) Ordinarily, a CCL will be entitled to bail under Section 12 of The Juvenile Justice (Care and Protection of Children) Act, 2015 except wherein:

(i) There appears to be reasonable grounds that such release is likely to bring the CCL into association with any known criminal; or

(ii) There appears to be reasonable grounds that release of such CCL may expose him/her to moral/physical/psychological danger; or

(iii) Such release would defeat the ends of justice.

For a Board to hold that a given case falls under above-said three exceptions, the Board is required to rely upon tangible material to so hold and mere apprehension would not suffice to decline bail.

(II) *The gravity/seriousness of an offence shall by itself not be a reason for rejection of bail of a CCL unless it is shown that such release would defeat the “ends of justice.”*

For instance; wherein a CCL is alleged to be involved in a gruesome murder or a barbaric sexual assault or serious terrorist/anti-national activity(s); the Board may be justified in declining such release since release would defeat the “ends of justice”. These situations are illustrative in nature as it neither desirable nor possible to exhaustively enumerate all such situations and each case is required to be considered by the Board in its own facts/circumstances.

(III) *The Board while considering a plea for bail by CCL, shall obtain and look into the SIR (Social Investigation Report) obtained in terms of Section 8 of 2015 Act as also the attending circumstances of the case in hand such as status of the family members of the CCL, the atmosphere around the ordinary residence of the CCL, educational background of the CCL as also his family members etc. These factors are only illustrative in nature as it is neither possible nor desirable to exhaustively enumerate such like factors.*

(IV) *The Board, in case of rejection of bail of CCL on the basis of exceptions contained in proviso to Section 12(1) of the 2015 Act, is bound to accord reasons and briefly give the circumstances that have led to such rejections.*

(V) *An earnest effort ought to be made by the Board in expeditious decision of a plea for bail made on behalf of CCL and there should not be an inordinate delay in obtaining the SIR etc. since the matter pertaining to a CCL deserves to be dealt with exercising sensitivity, care and caution.”*

6. The petitioner was taken into custody on 16.02.2021 whereinafter investigation was carried out and challan stands presented on 12.05.2021. Total 13 prosecution witnesses have been cited out of which only 07 have been examined till date. Nothing tangible has been brought forward to indicate the likelihood of the petitioner absconding from the process of justice or interfering with the remaining prosecution evidence. There is no perceptible material on record to indicate that the release of the petitioner on regular bail would defeat the ends of justice. As per custody certificate dated 15.04.2024 filed by learned State counsel, the petitioner has

months & is not shown to be involved in any other case. Therefore, in considered opinion of this Court, further detention of the petitioner as an undertrial is not warranted in the facts and circumstances of the case.

7. In view of above, the present petition is allowed. Petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the Ld. concerned CJM/Duty Magistrate. However, in addition to conditions that may be imposed by the concerned CJM/Duty Magistrate, the petitioner shall remain bound by the following conditions:-

- (i) The petitioner shall not mis-use the liberty granted.
- (ii) The petitioner shall not tamper with any evidence, oral or documentary, during the trial.
- (iii) The petitioner shall not absent himself on any date before the trial.
- (iv) The petitioner shall not commit any offence while on bail.
- (v) The petitioner shall deposit his passport, if any, with the trial Court.
- (vi) The petitioner shall give his cellphone number to the Investigating Officer/SHO of concerned Police Station and shall not change his cell-phone number without prior permission of the trial Court/Illaqqa Magistrate.
- (vii) The petitioner shall not in any manner try to delay the trial.

8. In case of breach of any of the aforesaid conditions and those which may be imposed by concerned CJM/Duty Magistrate as directed hereinabove or upon showing any other sufficient cause, the State/complainant shall be at liberty to move cancellation of bail of the petitioner.

9. Ordered accordingly.

10. Nothing said hereinabove shall be construed as an expression of **opinion** on the merits of the case.

11. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(SUMEET GOEL)
JUDGE

April 16, 2024
Ajay

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