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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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Date of Decision : May 27, 2024

ABC

-PETITIONER

V/S

UNION TERRITORY CHANDIGARH

-RESPONDENT

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Dr. Anmol Rattan Sidhu, Sr. Advocate with
Mr. Pratham Sethi, Advocate
for the petitioner.

Mr. Manish Bansal, P.P., U.T. Chandigarh with
Ms. Vasundhara Dalal Anand, Addl. P.P., U.T. Chandigarh.

KULDEEP TIWARI, J. (ORAL)

1. Through the instant revision petition, the petitioner/“Child in Conflict with Law” (hereinafter referred to as the ‘CCL’), who is currently confined in the Observation Home, Sector 25, Chandigarh, has assailed the order dated 20.02.2024, whereby, the Principal Magistrate, Juvenile Justice Board, Chandigarh, has declined his bail application, in FIR No.02 dated 05.01.2024, under Section 377 of the IPC and Section 6 of the POCSO Act. In addition, the CCL has also assailed the order dated 23.02.2024, whereby, the learned Additional Sessions Judge (Duty), Chandigarh, has dismissed his statutory appeal, as preferred against the declining order dated 20.02.2024.

2. The present FIR derives its origin from a complaint made by the father of a child aged 10 years (hereinafter referred to as the ‘victim’).

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Succinctly stated, the allegations levelled in the complaint are that, on 05.01.2024, at about 08:25 p.m., the victim disclosed to his father that, at about 03:00 p.m., when he returned from tuition, he started playing near his house. Then the CCL, who was residing in their neighbourhood, took him to his house and forced him to suck his penis and thereafter, performed unnatural sex with him.

3. Based on this complaint, the present FIR was registered and the CCL was apprehended and sent to the Observation Home concerned. Thereafter, the victim was got medico legally examined. The relevant extract of the medico legal report, which is enclosed with the instant revision petition as Annexure P-2, is reproduced hereunder:-

“State of anal area including sphincters:

Abrasion present around the anus there is superficial skin tear at 6 o clock positions at posterior midline with fresh oozing of blood present, tenderness present. No discharge or pus seen.

XXX

XXX

XXX

OPINION

On the basis of physical examination, there is no feature suggestive of recent forceful anal penetration.”

4. Thereafter, on 08.01.2024, the statement of the victim, under Section 164 of the Cr.P.C., was recorded before the learned Judicial Magistrate concerned. After completion of investigation, the Final Report was presented on 15.02.2024. Then the CCL approached the learned Juvenile Justice Board concerned and also the learned Additional Sessions Judge concerned, thereby seeking his release on bail, however, vide the orders impugned herein, his prayer for bail was declined.

SUBMISSIONS OF THE LEARNED SENIOR COUNSEL FOR THE

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5. The learned senior counsel representing the CCL has made the following submissions:-

- (i) Basically, both the learned courts below have failed to adhere to the statutory provisions embodied in The Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as the 'Act of 2015'), while declining bail to the CCL;*
- (ii) Although, as per Section 12 of the Act of 2015, the gravity of the offence is insignificant for the purpose of granting bail to a juvenile, however, even otherwise the CCL has a good case on merits;*
- (iii) The CCL has not committed the alleged offence, rather he has been made a prey of a concocted and premeditated story. The opinion of the doctor concerned clearly reflects that the victim was never subjected to any anal intercourse, therefore, the provisions of Section 377 of the IPC and Section 6 of the POCSO Act are not at all attracted;*
- (iv) Despite the CCL not being at fault, yet his family has shifted their abode from the vicinity of the victim, so that his release on bail may not constitute a ground for the victim's family to plead threat perception;*
- (v) The CCL has a bright future, inasmuch as, during his stay at the Observation Home concerned, he appeared in senior secondary examinations and scored 77% marks. Therefore, subjecting the CCL to prolonged incarceration, who was arrested on 06.01.2024, would not serve any gainful purpose, rather would spoil his future;*
- (vi) The Social Investigation Report (S.I.R.) ought to have been re-*

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jected by both the learned courts below, as the same is not supported by any evidence, rather is based upon assumptions and pre-sumptions;

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE RESPONDENT

6. The submissions made by the learned senior counsel for the CCL have been opposed by the learned Public Prosecutor representing the respondent. The thrust of his arguments is upon the disclosures made in the reply dated 21.03.2024, as also upon the Social Investigation Report (S.I.R.).

7. For ready reference, the relevant extract of the Social Investigation Report (S.I.R.) is reproduced hereinafter:-

“The perusal of Social Investigation Report of the appellant/CICL reveals that counselling sessions are being provided to appellant/CICL and he is preparing for his exams. It is further reported that parental neglect, not-attentive care of parent and peer group influence were the reasons for the commission of offence.”

REASONS FOR ALLOWING THE INSTANT REVISION PETITION

8. This Court has heard the submissions made by the learned counsels for the contesting litigants and also perused the record. For the reasons assigned hereinafter, this Court deems it appropriate to allow the instant revision petition.

9. First of all, it is true that, the gravity of the offence may not *stricto sensu* be the reason for declining the relief of bail to a juvenile, especially in the light of the provisions engrafted in Section 12 of the Act of 2015. Moreover, even if we consider the allegations levelled against the petitioner, it appears that the instant matter clothes debatable issues, which require consid-

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eration, inasmuch as, the medico legal report of the victim (Annexure P-2) explicitly opines that *“on physical examination, there is no feature suggestive of recent forceful anal penetration.”*

10. Moreover, since the CCL has, while being confined in the Observation Home concerned, performed exceptionally well by scoring 77% marks in his senior secondary board examinations, therefore, it means that he is on the path of reformation.

11. Now, insofar as the Social Investigation Report (S.I.R.) is concerned, which has been relied upon by both the learned courts below while declining bail to the CCL, this Court does not find any evidence suggestive that the CCL performed the alleged offence because of the negligent attitude of his parents, and as such, the same is of no significance. Moreover, when the parents of the CCL have shifted their abode from the vicinity of the victim, therefore, there arises no immediate threat to the victim, if the CCL is released on bail.

12. Furthermore, this Court also concurs with the view adopted by a Co-ordinate Bench of this Court, while dealing with an alike matter, in CRR No.1005 of 2020, Decided on: 08.08.2020, that *“grant of bail to a juvenile is a rule and the decline of the same is an exception”*. The relevant paragraph of this order is reproduced hereinafter:-

*“(7) Grant of bail to a juvenile is a rule and the decline of the same is an exception. This Court in **CRR No.808 of 2020 titled as Sahil alias Nannu versus State of Haryana decided on 09.06.2020**, held that a child in conflict with law should be released on bail notwithstanding anything contained in the Code of Criminal Procedure or any other law for the time being in force except for any of the three contingencies specified in proviso to Section 12(1) of the Act i.e. (i)*

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*if there appears to be a reasonable ground for believing that the release of the juvenile is likely to bring him into association with any known criminal, or (ii) the release will expose the juvenile to moral, physical or psychological danger or iii) his release would defeat the ends of justice. Reliance can further be placed in this regard upon judgment of this Court in **CRR No.869 of 2020 titled as Manga Mann and another versus State of Punjab, decided on 21.05.2020.***

13. In summa, this Court deems it appropriate to grant the relief of bail to the CCL, who has been confined in the Observation Home since 06.01.2024. Consequently, the instant revision petition is **allowed**, and, the impugned orders dated 20.02.2024 and 23.02.2024 are set aside. The CCL is ordered to be released on bail, subject to furnishing adequate bail/surety bonds to the satisfaction of the Principal Magistrate, Juvenile Justice Board, Chandigarh.

14. The parents/legal guardians of the CCL shall regularly monitor his movement and ensure that he does not come in association with any known criminals and does not indulge in any other offence.

15. It is clarified that the observations recorded hereinabove are only meant for deciding the instant revision petition and the same shall not be construed to be an opinion on merits of the case.

May 27, 2024
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(KULDEEP TIWARI)
JUDGE

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