

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

216

CRM-15130-2024 in/&
CRR-680-2024 (O&M)

Date of decision: 15.04.2024

Sxxx Axxx

....Petitioner

V/s

State of Punjab

....Respondent

CORAM: HON’BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Rajvir Singh, Advocate for the petitioner.
Mr. Anup Singh AAG Punjab.

SUMEET GOEL, J. (Oral)

CRM-15130-2024

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 and the delay of 55 days in filing the instant revision petition is condoned.

CRR-680-2024

1. The petitioner-child in conflict-with-law (hereinafter referred to as ‘CCL’) has filed the present revision petition challenging the order dated 29.09.2023 passed by learned Principal Magistrate, Juvenile Justice Board, Rupnagar (hereinafter referred to as ‘Juvenile Justice Board’) and order dated 08.11.2023 passed by learned Sessions Judge, Rupnagar. By way of impugned orders the prayer made on behalf of the CCL for grant of bail has been dismissed.
2. The case set out, in the FIR No.170 dated 12.08.2023 registered under Sections 363, 366, 376, 306, 120-B and 305 of Indian Penal Code (hereinafter to be referred as ‘IPC’) and Section 6 of Protection of Children

from Sexual Offences Act, 2012 (hereinafter to be referred as 'POCSO'), at Police Station City, Ropar (as stated in the petition) is as follows:-

“Copy of Statement of Mohammad Sofian son of Mohammad Usman resident of House No. 480/1, Meera Bai Chowk, Rupnagar, P.S. City Rupnagar aged 43 years Mob. No. 95011-97360. Stated that I am the resident of above mentioned address as tenant. The date of birth of my elder daughter namely Sonal Sheikh is 29.11.2007 who was a student of 11th Class (Medical) at Senior Secondary School (Girls). That on 11.08.2023 daughter back came at about 6:00 PM from tuition and my he started crying with her mother Nasira. About which my wife disclosed me on phone and I reached at home where we both asked the girl the reason of her crying then she disclosed that today when I was in school then one known to her person namely Aman son of Sukhbir resident of house No. 23, Gurukul School, near Garden Colony, Rupnagar and his one friend namely Davi resident of Preet Colony, Rupnagar took her on motorcycle at about 01:30 PM by saying that we are going for outing but the above said Aman took her to the house of a person namely Sunny who is residing near Shehnayi Palace. Sunny and Davi by dropping me went back and Aman bloated the door of room from inside and did forcefully wrong act with me. Then Su Sunny knocked the door to whom I disclosed the whole things and after that Aman dropped me to the school. Now with that incident I am depressed but under a fear I did not disclose to you. That after hearing the whole incident, I and my wife searched Aman and tried to talk with him but he did not give any satisfactory answer. My daughter was mentally upset since yesterday and today I was in city for searching the whereabouts of Aman and my wife was doing stitching work in a room then at about 01:15 PM my daughter committed suicide by hanging herself with a fan. My daughter committed suicide as wrong a act was done by Aman forcefully and Sunny and Davi their friends was also accompany with him. That legal action be taken against Aman, Sunny and Davi. Statement is recorded which is heard and correct. Sd/ Mohammad Sofiaa witnessed by Sd/- Sultan Mohammad. Attested by SI Swati Dhiman, P.S. Rupnagar, Dated 12.08.2023.”

3. Learned counsel for the petitioner has argued that the petitioner was arrested on 12.08.2023 and is in custody since then. Moreover, name of the petitioner surfaced in the disclosure statement of co-accused and such a custodial statement obtained under coercion is not admissible in court. It has

been further submitted that there is no medical evidence or any other proof available from which it may be decipherable that petitioner had committed any wrong act with the victim-deceased. The date of birth of the petitioner has been stated to be 10.06.2006 as per which the CCL is aged about 17 years and 02 months on the date of alleged offence i.e. 11.08.2023. Learned counsel has further stated that after completion of investigation, final report has been filed wherein total 23 prosecution witnesses have been cited. Learned counsel, while relying upon the statutory provision of Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015, has argued that the petitioner ought to have been released on regular bail in the facts and circumstances of the case.

4. Learned State counsel has opposed the present petition arguing that the allegations raised are serious in nature and thus the petitioner does not deserve the concession of the regular bail.

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

6. 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.”

Analysis (re facts)

7. The case set up against the CCL (who was aged about 17 years and 02 months on the date of alleged offence) primarily is that on 11.08.2023, X and AN brought the victim-deceased (minor) who was aged about 15 years old, to the house of the CCL (petitioner herein), whereinafter co-accused (AN) forcibly committed rape upon victim-deceased. Final report has been presented against the CCL wherein 23 prosecution witnesses in total have been cited & thus culmination of trial/enquiry will take its own

time. There is no material available on record to indicate that there is likelihood of the CCL coming into association with any known criminal or his being exposed to moral/physical/psychological danger. The learned JJB, Rupnagar as also the learned Sessions Judge, Rupnagar appear to have rejected the bail of the CCL in question on the ground that the release of the CCL would not only defeat the ends of justice but there being high chances of CCL being exposed to moral/physical/psychological danger and decay. However, these findings appear to have been recorded on a mere apprehension and without any material/basis on record. The mere nature of the offence alleged to have been committed by the CCL does not make it a case calling for rejection of the bail so as to preserve the ends of justice. Moreover, his continued incarceration may affect his moral character; jeopardize his career prospects and he may also be rendered jobless forever. Petitioner is being kept in preventive custody merely on an unfounded suspicion that if he is let out, he may either tamper with evidence and/or influence witnesses. This Court is accordingly of the considered opinion, that in the facts and circumstances of the case in hand, that the petitioner-CCL deserves to be enlarged on bail.

Decision

8. Accordingly the present revision petition is allowed and impugned orders dated 29.09.2023 and 08.11.2023 are set-aside. Petitioner-CCL is ordered to be released on bail on his furnishing requisite bail/surety bonds etc. to the satisfaction of concerned CJM/Duty Magistrate.

It is further directed that such concerned CJM/Duty Magistrate shall be at liberty to impose such further condition(s) as deemed appropriate by him/her while releasing the petitioner-CCL on bail.

9. 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.
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 15, 2024
Ajay

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