

CRA-S-1679-2024

2024:PHHC:079375



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

CRA-S-1679-2024

Date of decision: 30th May, 2024

Semil

...Appellant(s)

Versus

State of U.T., Chandigarh

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. J.K. Kamboj, Advocate for the appellant.

Mr. Manish Bansal, P.P., U.T., Chandigarh.

MANISHA BATRA, J (ORAL):-

The instant appeal has been filed under Section 101 of Juvenile Justice Act, 2015 (for short 'the Act, 2015') read with Section 482 of Cr.P.C. by the appellant against the order dated 03.04.2024 whereby an application for grant of regular bail as filed by him in case arising out of FIR No. 21 dated 30.01.2023 registered under Sections 376, 366, 328, 506 and 120-B of IPC, 1860 had been dismissed.

2. Relevant facts for the purpose of disposal of present appeal are that the aforementioned FIR was registered on the basis of statement recorded by the prosecutrix 'H' (name withheld) alleging therein that on 15.10.2022, the appellant who was her friend had invited her to join a party along with two of her female friends at some club at Panchkula. The prosecutrix had agreed to that. At about 11:00 PM, he picked up the



prosecutrix and her two friends and took them to the club wherein the prosecutrix also met the accused Krishna who was her friend as well as an *instagram* follower. The accused Krishna served liquor containing some intoxicating substance to her on consuming which she was not in her full senses. He took her outside and while forcibly making her sit in his car, he tried to commit rape upon her by removing her pants. While she was resisting his move, the co-accused Harsh also reached there and by taking her out of the car of accused Krishna, he took her to the back seat of his own car and committed rape upon her. The prosecutrix further alleged that she had lost consciousness thereafter and on gaining the same, she found herself to be taken somewhere by an unknown person, appellant, co-accused Yuvraj and Harsh. They took her to some paying guest accommodation wherein the co-accused Harsh committed rape upon her and while their unknown friend tried to commit rape upon her, she tried to wake up the appellant who was sleeping there on a mattress, for her rescue but he did not respond. She somehow saved herself by bolting her inside the bathroom. In the morning, the accused persons got a cab booked and while advising her to not to disclose about the incident to anyone, she was sent back to her house.

3. After registration of FIR, the investigation proceedings were initiated. The accused Krishna, Rajat Thakur, Yuvraj Singh, Bhagat Singh and Harsh were apprehended. The appellant who is a juvenile was detained on 02.02.2023. Presently, he is facing trial as an adult before the Children Court. He had filed a petition for grant of regular bail which was dismissed vide order dated 03.04.2024 and aggrieved by the same, the instant appeal



has been filed by him.

4. It is submitted in the grounds of appeal and it is argued by learned counsel for the appellant that there is delay of more than two and half months in lodging of the FIR. The appellant has been falsely implicated in this case. Infact, he is also one of the victims of the incident. He had remained in touch with the prosecutrix after the alleged incident and kept on sending her messages on whatsapp, which clearly show his non involvement in the commission of subject offences. The allegation of sexually assaulting the victim are not upon the appellant. The prosecutrix has since been examined and has admitted that she was never sexually abused by the appellant and also that the appellant did not even have any knowledge about the incidents which had happened with her on the fateful night in the club, wherein she had been invited by him. There is no apprehension that he would tamper any record or win over any witness. The learned trial Court did not properly consider the provisions of Section 12 of the Act, 2015, as per which, he was entitled to be released on bail irrespectively the gravity of the allegations levelled against him. There is also nothing on record to show that his release would 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. The learned Children Court while dismissing the plea of the appellant for his release on bail did not take all these points into consideration and committed an error by holding that his release would expose him to social and psychological danger, though there was no basis for the same. With these broad submissions, it is urged that the



impugned order is liable to be set aside, the appeal deserves to be accepted and further that the appellant-juvenile deserves to be benefit of regular bail.

5. Status report has been filed by the respondent-U.T.. It is argued by learned public prosecutor that there are serious allegations against the appellant as it was he who had taken the victim to the club. He was very much present with the co-accused when they had sexually assaulted the victim in the paying guest accommodation/apartment of the co-accused-Yuvraj. The victim has submitted in her sworn deposition that she had called upon the appellant for her rescue when he was sleeping in the same room wherein she had been ravished by the co-accused but he did not respond though he had been attending some phone calls. All this goes to prima facie show that he was very much aware about what was happening with the prosecutrix at that time. It is he who shown to have dropped the prosecutrix after she was being ravished by the co-accused at his house in a cab in the next morning. He might not have individually committed rape upon the victim but at this stage, it cannot be stated that he had no complicity in the crime alleged to have been committed upon the prosecutrix by the co-accused. It is argued that the release of the appellant on bail would certainly defeat the ends of justice. It is further argued that the appellant has been directed to be tried as an adult by the Juvenile Justice Board and is facing as such before the Children Court. The trial Court had discussed the provisions of Section 12 of the Act, 2015 and had rightly declined grant of bail to the appellant. Accordingly, it is urged that there no infirmity or illegality in the impugned order and the appeal does not deserve to be allowed.



6. I have heard learned counsel for the appellant as well as learned State counsel at considerable length and have gone through the record carefully.

7. 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 *CRA-S- 149-2023, 'Sachin @ Suraj Vs. State of Haryana'*, decided on 12.07.2023. 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:-

- (i) Bring that person into association with any known criminal or;
- (ii) Expose the said person to moral, physical or psychological danger or;
- (iii) 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 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 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 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. The order passed by learned Children Court has been challenged by the appellant on the ground that while passing the same, the concerned Court did not properly consider the Section 12 of the Act, 2015



and also failed to consider that the appellant had not sexually abused the victim and even had no knowledge about the incident that had happened to her in the club. Undisputedly, the victim has since been examined in this case and a cursory perusal of her testimony reveals that no specific allegations had been levelled by her against the appellant that he individually had committed act of ravishing the victim. However, the same simultaneously reveals that when she was taken to some apartment belonging to the co-accused and had been sexually assaulted by one of them and was attempted to be ravished by the other, the appellant was very much present there. The prosecutrix is shown to have stated that she had made rescue call and tried to wake up the appellant but he did not respond, though, he had been seen by her while attending some phone calls. The allegations as levelled against the accused as such are certainly grave in nature. The well settled proposition of law is that though the scheme of the Act, 2015 takes into consideration, the nature of the offences as well but the powers under the provisions of this Act are to be exercised not only while taking into consideration, the best interest of the child in-conflict with law but also concerned with the victim's family and larger interest of the society. In this regard, reference can be made to '*Minor 'X' Vs. State of Uttar Pradesh and another, 2023(2) Cri. CC 718*' wherein similar observations were made by High Court of Allahabad. Keeping in view the nature of allegations and the part played by the appellant in the occurrence, I am of the considered opinion that it can be certainly stated that the release of the appellant on bail would certainly defeat the ends of justice. As such, no illegality much less



infirmity can be said to have been found in the impugned order passed by the Fast Track Special Court and to extend benefit of bail to the appellant. Accordingly, it is held that the appeal does not deserve to be allowed. Hence, the same is dismissed.

[MANISHA BATRA]
JUDGE

30th May, 2024
Parveen Sharma

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| 1. Whether speaking/ reasoned | : | Yes / No |
| 2. Whether reportable | : | Yes / No |