

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

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CRR No. 1591 of 2023 (O&M)
Date of decision: 04.03.2024

‘S’ ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Vishal Garg Narwana, Advocate
for the petitioner.

Mr. Arjun Lakhanpal, Addl. A.G., Haryana.

MANISHA BATRA, J. (Oral)

1. The present revision petition has been filed against the order dated 22.02.2023, passed by the Principal Judge, Juvenile Justice Board, Panipat (*for short ‘the Board’*), whereby an application, filed by the petitioner who was a juvenile in conflict with law for grant of regular bail in case FIR No. 315 dated 08.06.2022, registered under Sections 363, 366 and 376 of IPC at Police Station Quilla Panipat, District Panipat, had been dismissed as well as against the order dated 26.05.2023, whereby the appeal filed by the petitioner against the order of the Board had also been dismissed in case FF

2. Brief facts of the case relevant for the purpose of disposal of the present petition are that the petitioner is facing inquiry for commission of offences punishable under Sections 363, 366 and 376 of IPC on the basis of a

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written complaint filed by complainant 'B' (*name withheld*) alleging therein that the victim 'A' (*name withheld*), who was his 17 years' old daughter studying a local govt. school at her village, had gone from the house in the evening of 03.06.2022 but was enticed away by the petitioner on the way. He alleged that she had also taken an amount of Rs.22,000/- along with her and that the petitioner had kidnapped/abducted her with intent to either compel her to marry him or to force or seduce her to illicit intercourse. After registration of the FIR, investigation proceedings were initiated. The petitioner was arrested on 03.07.2022 and ever since then, he is in protective custody. After completion of the inquiry, *challan*/report has been presented before the Board and he is facing inquiry for commission of offences punishable under Sections 363, 366 and 376 of IPC and Section 6 of the POCSO Act. As mentioned above, he had moved an application for grant of bail before the Board, which had been dismissed, vide order dated 22.02.2023 and thereafter, the appeal had also been dismissed by the lower appellate Court.

3. It is submitted in the petition and it has been argued by learned counsel for the petitioner that the impugned orders are not sustainable in the eyes of law. At the time of alleged occurrence, the petitioner was 17 years' old. He is in custody since 03.07.2022. While passing the impugned order, the Board completely ignored the fact that being a juvenile, he was entitled to grant of bail under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015 (*for short 'Act, 2015'*) as a matter of right as there was nothing on record to prove that his release was likely to bring him in association with known criminals or would expose him to social, moral, physical and psychological danger or that the same would defeat the ends of

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justice. He has submitted that even lower appellate Court committed an error in observing that there were chances of the petitioner's being exposed to social, moral, physical and psychological danger and it was not in his best interest, if benefit of bail was granted to him. Learned counsel further submitted that complainant 'B' has since been expired and the notices/summons issued to the alleged victim have been received back unserved, due to the reasons that she has eloped with someone else. The petitioner is in custody since 3.07.2022. The conclusion of inquiry is likely to take some time. With these broad submissions, it is urged that the impugned orders are liable to be set aside; the revision petition deserves to be accepted and the petitioner deserves to be extended benefit of bail. To fortify his argument, learned counsel for the petitioner has relied upon ***Vishvas vs. State of Punjab : 2021(2) RCR (Criminal) 207.***

4. *Per contra*, learned State counsel has argued that the petitioner is facing inquiry for commission of serious offences. The Board as well as the lower appellate Court had rightly declined the prayer of the petitioner for grant of bail in view of the fact that his release might defeat the ends of justice and there were chances of his being exposed to social, moral, physical and psychological danger. Therefore, it is urged that the present petition is liable to be dismissed.

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

6. It is not in dispute that the petitioner is a child in conflict with law and at the time of commission of the subject crime, he was below 18 years. He has been booked for commission of offences punishable under

Sections 363, 366 and 376 of IPC and Section 6 of the POCSO Act. There is no doubt that offence of rape is a heinous crime. However, it cannot be ignored that Section 12 of the Act, 2015 contains a mandate to release a child in conflict with law on bail, when he is apprehended or detained in connection with an offence. Even if a juvenile is to be tried as an adult, still his plea for bail is to be considered under the parameters provided under Section 12 of the Act, 2015 which are clearly distinguishable from the application filed under Section 439 of Cr.P.C. Reliance in this regard can be placed upon the case cited as ***CCL 'A' vs. State (NCT of Delhi), 2021 CriLJ 1251***, wherein similar view was taken by the High Court of Delhi.

7. The rule in Section 12 of the Act, 2015 sanctioning bail universal to every child in conflict with law presupposes that there is a *prima facie* case against him in the assessment of the Board or the Court based on the evidence placed at that stage. It is where a case against a child in conflict with law is *prima facie* made out that the rule in Section 12 (1) of the Act, 2015 that sanctions bail as a rule, except the three categories contemplated by the proviso comes into play. These three categories are that there is reasonable ground for believing that the release is likely to bring the child into association with any known criminal, or; that it will expose him to moral, physical or psychological danger, or; that his release defeats the ends of justice. In this regard, reference can be made to ***Dr. Subramanian Swamy and others v. Raju, 2014 (86) ACC 637***, wherein similar observations were made.

8. No doubt, Section 15 of the Act, 2015 provides for transfer of a juvenile to the Children Court for trial as an adult where the child has attained the age of 16 years and has been alleged to have committed heinous offence as

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is done in this case. However, it is also pertinent to mention that Section 12 of the Act, 2015 has not been amended so far as the parameters and yardsticks for granting bail to the juvenile are concerned. Therefore, while rejecting the bail application of a juvenile, it cannot be the criteria that the alleged offence is of serious and heinous nature and his bail can be rejected only if the Court comes to a conclusion that release of bail will adversely affect the interest of the juvenile. In this case, there appears to be nothing on record showing that there is any moral, physical or psychological danger to the petitioner-jvenile, if he is released on bail, nor there is any possibility that he will come in the company of any known criminal nor there is any reason to conclude that his release on bail will defeat the ends of justice. Though, the Board as well as the Children Court, before which the petitioner is presently facing inquiry, have observed in their respective orders that there are chances of the petitioner's being exposed to social, moral, physical and psychological danger, however, there appears to be nothing, on the basis of which, such observations have been made by the Board as well as the lower appellate Court. There is also nothing on record to show that the petitioner might be exposed to company of any known criminal nor there is any reason to conclude that his release would defeat the ends of justice as the complainant is stated to have expired. The statement of the victim is to be recorded but learned counsel for the petitioner has placed on record copies of orders, passed by the Children Court, which show that several times, notices have been issued to her but her presence could not be secured so far. Though there is nothing on record to give any consideration to the plea of learned counsel for the petitioner that the victim has eloped with someone, however, still in view of the discussion as made

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above, this Court is of the considered opinion that the rejection of the bail of the petitioner by the Board as well as by the lower appellate Court is inappropriate and the said orders suffer from material illegalities and irregularities. The Board and the lower appellate Court are not shown to have exercised the jurisdiction vested in them while keeping in view the object of the Act, 2015. Therefore, finding the impugned orders to be unsustainable, the same are set aside.

9. As per the discussion made above, the present revision petition is allowed and the petitioner is ordered to be released on bail and he be given in the custody of his mother/guardian, on her/his filing personal bonds and two sureties of the like amount to the satisfaction of the Court concerned with the undertaking that the mother/guardian shall keep the juvenile away from unsocial and criminal elements, will look after his health, keeping his mental and social status. She/he will also give an undertaking that on being released on bail, she/he will ensure his presence during trial before the Court concerned whenever so required.
10. Office is directed to transmit certified copy of this order to the Court concerned for information and necessary compliance.

04.03.2024
Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No