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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CRR-1534-2024 (O&M)

Date of decision: 17.09.2024

Krish @ Krish Kumar

...Petitioner

V/s

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Raman Chawla, Advocate for the petitioner.
Ms. Priyanka Sadar, AAG Haryana.

SUMEET GOEL, J. (Oral)

1. The petitioner-child in conflict-with-law (hereinafter referred to as 'CCL') has filed the present revision petition challenging the order dated 09.07.2024 passed by learned Principal Magistrate, Juvenile Justice Board, Hisar (hereinafter referred to as 'Juvenile Justice Board') and the order dated 26.07.2024 passed by learned Additional Sessions Judge, Fast Track Special Court, Hisar. 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.238 dated 26.04.2024 registered under Sections 354A(1)(i), 354-C, 376, 506, 509 of Indian Penal Code (hereinafter to be referred as 'IPC'), Section 4 of Protection of Children from Sexual Offences Act, 2012 (hereinafter to be referred as 'POCSO'), and Sections 3(1)(r), 3(1)(s), 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Amendment of 2015), at Police Station Barwala, District Hisar. (as stated in the petition) is as follows:-

“To Smt. SHO Sahiba Women Police Station Hansi Subject:- Regarding arrest by registering a case against Krish son of Unknown resident of



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Barwala Tehsil Barwala District Hisar Mo. No. 99915-78004. Sir, the request is that I, Vanshika daughter of Shri Suresh Kumar, is resident of Ward No 13, Narnaund Tehsil Narnaund District Hisar and belong to Chamar caste and my date of birth is 20.12.2007 and I am enrolled in 10th class in Government Model Sanskriti School, Narnaund. I have created an Instagram ID in the name of starchori302 in my brother's mobile number 99914- 42693, which is my above-mentioned ID. But the above Krish has created an Instagram ID in the name of official.krish.jaat. It has been created and he has transferred my above-mentioned ID from his above-mentioned ID. But he started sending me messages and told me that they would be friends. I fell into the trap of his friendship and started talking to Krish. Which Krish told me that I am from Jat caste and you marry me and run away from your house with me and I will keep you as my queen. I could not understand the motive behind his conversation and I started talking to Krish on my brother's mobile number 99914- 42693. On 21.04.2024, Krish through message on above I.D and asked me to meet him and sit in the park near the bus stand and talk. I believed his words and went to the above- mentioned park around 1.30 pm where Krish was already present, who was in the park at that time. There was no one in the park. First he forcibly molested me and took photos of me kissing with his mobile and when I protested, he started threatening me that if I did not listen to him, he would defame me and forcibly raped me in the park itself and when I started weeping, then Krish threatened me Shali, chamari dedhni that if you tell anyone about this then I will kill you and your family will be killed, I am a big goon, which got me very scared and I went to Hisar bus stand from there and from there I went to my sister home at Meham and told everything to my sister and my sister called my parents there and then I told everything to my parents. The above mentioned Krish has deliberately done wrong to me without my consent and on 21.04.2024, when I had left my house, my father had given a complaint regarding my missing on 22.04.2024 in Narnaund police station. Therefore, by presenting the application, it is requested that a case be registered against the above mentioned Krish forthwith and he should be immediate arrested. It will be so kind of you. Date: 23-04-2024 Place: Hansi Sd/xxxx.”

3. Learned counsel for the petitioner has argued that the petitioner was arrested on 27.04.2024 and is in custody since then. Learned counsel

has submitted that FIR was registered on the basis of false, fabricated and

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concocted version of the complainant. It has been further submitted that the victim and the petitioner were having friendly relationship and the victim went to the park on her own accord where the alleged occurrence has taken place. Moreover, 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. It has been further asserted that apart from the victim's statement, there is no corroborative evidence to substantiate the claim of sexual assault. The date of birth of the petitioner has been stated to be 09.05.2007 as per which the CCL is aged below 16 years and 11 months at the time of alleged offence. Learned counsel has further stated that after the completion of the investigation, challan (final report under Section 173 of Cr.P.C., 1973) was filed on 22.06.2024 wherein total 24 prosecution witnesses have been cited. According to the learned counsel, both the Courts below have not appreciated the Social Information Report (SIR) in the right perspective and passed the impugned orders in a hasty manner without considering the settled principles of law. Learned counsel, while relying upon the statutory provisions 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. According to the learned counsel, the petitioner has committed a heinous offence of sexual assault with the minor who is merely 16 years of age.

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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 16 years and 11 months on the date of alleged offence) primarily is that the victim came in contact with the petitioner-CCL through Instagram. On 21.04.2024, the petitioner had called the victim to meet in a park at Barwala and started molesting her and committed rape upon her against her wishes. She was also threatened by the petitioner in case she narrated the same to anyone. Final report has been presented against the CCL wherein 24 prosecution witnesses in total have been cited and one has been examined till now & thus the culmination of the 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 Social Investigation Report submitted in the matter, which has been placed on record today by way of CRM-35367-2024, shows that the date of birth of the petitioner is 07.05.2007. The CCL has parents and two sisters, who are younger to the petitioner. The CCL has studied upto 10th class. The habits of CCL are watching TV/movies and playing indoor/outdoor games & he has same age group friends. As per the SIR, the reason for involvement of CCL in the

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Report, the CCL has not been found involved in any other criminal case. The CCL has not been used by any gangs or adults or group of adults or has been used for drug peddling; the CCL has not been subjected to any form of abuse; CCL is not a victim of any offence & that the CCL has never been involved in any kind of illegal activities. The learned JJB, Hisar as also the learned Additional Sessions Judge, Fast Track Special Court, Hisar appear to have rejected the bail of the CCL in question on the ground of the allegations against him being serious & the victim has levelled specific allegations of rape. Moreover, the victim, in her statement recorded under Section 164 of Cr.P.C., has reiterated the allegation of rape. However, these findings appear to have been recorded on a mere apprehension and without any material/basis on record. On the contrary, a perusal of the Social Information Report reflects that it would be in the fitness of the things especially the overall interest of the CCL that he is released on bail. 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, the petitioner is of tender age and being in custody for a prolonged period is detrimental to the petitioner's mental and emotional well being. Moreover, the petitioner-CCL has no previous criminal record or history of deviant behavior and his continued incarceration may affect his moral character; jeopardize his career prospects and he may also be rendered jobless forever. Furthermore, the petitioner-CCL comes from a stable family background and denying him bail may lead to an unjust deprivation of the petitioner's liberty without final adjudication of guilt. This Court is



accordingly of the considered opinion, that in the facts and circumstances of the case in hand, the petitioner-CCL deserves to be enlarged on bail.

Decision

8. Accordingly the present revision petition is allowed and impugned orders dated 09.07.2024 and 26.07.2024 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

September 17, 2024
Ajay