

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRA-S No.3139 of 2023
Date of Decision: 24.05.2024

Laxman

... Appellant

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. K.D.S. Hooda, Advocate,
for the appellant.

Mr. Arjun Lakhanpal, Addl. AG, Haryana,
for the respondent-State.

MANISHA BATRA, J.(Oral)

1. The instant appeal has been filed by the appellant against the order dated 29.04.2023 passed by the Court of learned Additional Sessions Judge, Kurukshetra in case arising out of FIR No.318 dated 19.07.2022 registered under Sections 363, 366-A and 506 of IPC and Sections 4 and 8 of Protection of Children from Sexual Offences Act, 2012 (For short “POCSO Act”) and Section 3 (1) (w) (ii) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (For short “SC&ST Act”) at Police Station Sadar Pehowa,

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District Kurukshetra, whereby an application filed by the appellant for grant of regular bail had been dismissed.

2. Brief facts of the case relevant for the purpose of disposal of the present appeal are that the aforementioned FIR was registered on the basis of written complaint filed by the complainant “J” mother of the victim (names of complainant and the victim withheld) alleging therein that on 18.07.2022 at about 5 PM, the victim who is her minor daughter, had gone to buy samosas from the sweet shop at the bus stand of her village. She already had to take back a sum of Rs.100/- from the appellant as this sum had become payable by the appellant who is working in the samosa shop, on account of some purchase made by her daughter some days back. She wanted to buy a T-shirt from the abovesaid amount of Rs.100/-. She alleged that on the pretext of getting her a T-shirt purchased from some shop at Pehowa, the appellant made her sit on his bike and took her along with him to Saraswati drain wherein he tried to commit rape upon her, while extending threat to kill her, if she disclosed about the incident to anyone. In the meanwhile, one of her neighbours had reached there who rescued the victim. She prayed for taking action against the culprit.

3. After registration of FIR, investigation proceedings were initiated. The statement of the victim was recorded under Section 164 of Cr.P.C. The appellant who is a juvenile was detained on 03.08.2022 and was kept in protective custody. Inquiry was initiated against him and thereafter report was presented before Juvenile Justice Board. The appellant has been charge-sheeted for commission of offences punishable under Sections 363,

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366 and 506 of IPC and Sections 4/18 and 8 of POCSO Act and Sections 3 (2) (v) (va) and 3 (1) (w) (ii) of SC&ST Act. Presently, he is facing trial before the Special Court constituted under the provisions of POCSO Act as he was ordered to be tried as an adult. An application for grant of regular bail as filed by him was dismissed by the trial Court vide order dated 29.04.2023.

4. Feeling aggrieved from the said order, the instant appeal has been filed by the appellant on the grounds and it has argued by his counsel that he has been falsely implicated in this case. Infact, the victim as well as the appellant both are minors. They belong to same village. They had developed intimacy/love with each other which was not accepted by their family and by concocting a false story, the FIR of this case was lodged. It is argued that infact on the fateful day, the cousin brother of the victim namely “K” (name withheld) and his friends had extended beatings to the appellant. He was medico legally examined and had gone to lodge complaint against them at the police station and apprehending action by the police, the family of the victim got lodged the present case falsely against him. He is in custody since 03.08.2022. His custodial interrogation is no more required. The victim and her mother stand examined. No useful purpose would be served by detaining him in custody any more.

5. It is further argued that while dismissing the application for grant of bail of the appellant, the learned trial Court ignored the fact that he was a juvenile and, therefore, the provisions of Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (For short “Act, 2015”)

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were applicable and he deserves to be released on bail as a matter of right. With these submissions, it is urged that the appeal be allowed, the impugned order be set aside and he be extended benefit of bail.

6. Per contra, it is argued by learned State counsel that there are serious and specific allegations against the appellant. The learned trial Court took all the contentions as raised by the parties into consideration and rightly observed that the appellant did not deserve to be given benefit of bail. Therefore, it is argued that the appeal is devoid of any merits and is liable to be dismissed.

7. The appellant was undisputedly below the age of 18 years as on the date of occurrence. It has also come on record that he has been sent by the Juvenile Justice Board to the Children Court for trial as an adult. It is well settled proposition of law that a juvenile in conflict with law still remains juvenile and cannot be denied benefit of Section 12 of the Act, 2015 when he is sent up for trial as adult. Reliance in this regard can be placed upon the observations made by a Coordinate Bench of this Court in *Sachin @ Suraj vs. State of Haryana, 2023 (3) Law Herald 2036*. 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

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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:-

- Bring that person into association with any known criminal or;
- Expose the said person to moral, physical or psychological danger or;
- 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 *Sanjeet Vs State of Haryana,*

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2020 (4) RCR (Criminal) 338 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. In this regard, reference can be made to Dr. Subramanian Swamy and others v. Raju through Member, Juvenile Justice Board and another, 2013 (4) RCR (Criminal) 131, wherein similar observations were made.

9. On applying the aforementioned principles of law to the peculiar facts of the present case, it has been revealed that the learned Fast Track Special Court/Children Court while dismissing the application filed by the appellant for grant of regular bail did not advert to the provisions of Act, 2015 and the afore discussed proposition of law and declined to grant benefit of bail to the appellant only on the ground that the allegations levelled against the appellant were serious in nature and there were chances of appellant's influencing the prosecution witnesses. No discussion whatsoever had been made on the point that there were any chances of appellant's being exposed to social, moral, physical and psychological danger, of bringing him into association of any known criminal or that his release would defeat the ends of justice though it was incumbent upon the learned Children Court/Special Court to do so. As such, this Court is of the considered opinion that the rejection of bail of the appellant by the learned

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29.04.2023 suffer from material illegality and irregularity. The learned Court is not shown to have exercised the jurisdiction vested in it while keeping in view the object of the Act, 2015. Therefore, finding the impugned order to be unsustainable, the same is set aside.

10. As per the discussion made above, the present appeal is allowed and the appellant 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.

11. It is clarified that observations made hereinabove shall not be construed as an expression of opinion on the merits of the case.

24.05.2024
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(MANISHA BATRA)
JUDGE

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