**CRR-2108-2024 (O&M)****-1-****IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH****230****CRR-2108-2024 (O&M)
Date of Decision: 04.11.2024**

Rajiv Sharma @ Lucky

..... Petitioner

VERSUS

State of Haryana & anr.

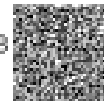
.... Respondents

CORAM: HON'BLE MS. JUSTICE HARPREET KAUR JEEWANPresent: Mr. Manjinder Singh Saini, Advocate
for the petitioner.

Mr. KS Thakur, AAG, Haryana.

Mr. G.S. Gopera, Advocate,
for respondent No.2.**HARPREET KAUR JEEWAN, J. (ORAL)**

1. The present revision has been filed assailing the order dated 01.10.2024 passed by the Additional Sessions Judge, Fast Track Special Court for the offences under the POCSO Act, 2012, Gurugram, whereby the appeal filed by the appellant under Section 101 of the Juvenile Justice (Care & Protection of Children) Act, 2015 (hereinafter referred to as "2015 Act") has been dismissed declining the relief of bail to the petitioner.
2. Notice of motion.
3. On the oral request made by learned counsel for the petitioner, the complainant prosecutrix is ordered to be impleaded as respondent No.2 in the present petition. Amended memo of parties be filed.
4. Mr. K.S. Thakur, AAG, Haryana, accepts notice on behalf of respondent No.1.



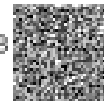
5. Mr. G.S. Gopera, Advocate, appears for respondent No.2 and submits that he had already filed his memo of appearance in the Registry.

6. I have heard learned counsel for the parties and perused the record.

7. As per the fact on record, the petitioner who is child-in- conflict with law/CCL, has been booked for commission of offences punishable under Sections 376DA, 204 of IPC, 3(2) VA SC/ST Act, 1989, 67A of IT Act and 6 of POCSO Act, 2012 for allegedly committing aggravated penetrative sexual assault upon a minor girl, who is aged about 15 years. It is also alleged that the petitioner along with his co-offenders had prepared her obscene video and circulated it on internet.

8. The bail application filed by the petitioner was declined by the Juvenile Justice Board, Gurugram, vide order dated 06.07.2024 on the ground that the minor victim is 15 years of age and in view of the proviso to Section 12 of the 2015 Act, no substantial ground is made out for extending the concession of regular bail to the petitioner/child-in-conflict/CCL. The said view was upheld by the First Appellate Court by observing that in view of the seriousness of the offence alleged to have been committed by the applicant/child-in-conflict/CCL, the ends of justice would be defeated in case he was released on bail.

8.1. The Appellate Court has observed that the final Social and Background Investigation Report (SIR) qua the appellant (petitioner herein) has been filed. However, there is no reference to the said report while declining the relief of bail to the petitioner.

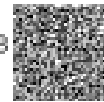


9. The provisions of Section 12 of the 2015 Act deals with bail to a juvenile-in-conflict with law. The Hon'ble Supreme Court in **Jitendra Singh @ Babboo Singh Vs. State of U.P., reported as 2013 (11) SCC 193** has held that the burden of denying bail to a juvenile-in-conflict with law is on the prosecution. The observations by the Hon'ble Supreme Court are as under:-

“51. The provision dealing with bail (Section 12 of the Act) places the burden for denying bail on the prosecution. Ordinarily, a juvenile in conflict with law shall be released on bail, but he may not be so released if there appear reasonable grounds 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.”

9.1. In **Delhi Development Authorities Vs. Skipper Construction Co. (P) Ltd. and another, reported as AIR 1996 SC 2005**, the Hon'ble Supreme Court observed that the meaning of “ends of justice” essentially refers to justice to all the parties which includes best interest of the public within the four corners of the statute and also means preservation of proper balance between the Constitutional/ Statutory rights of an individual and rights of the people at large to have the law enforced. The relevant observation of the Hon'ble Supreme Court reads as under:-

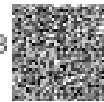
“376. While dealing with such an issue, the court must not lose sight of the fact that meaning of “ends of justice” essentially refers to justice to all the parties. This phrase refers to the best interest of the public within the four corners of the statute. In fact, it means preservation of



proper balance between the Constitutional/Statutory rights of an individual and rights of the people at large to have the law enforced. The “ends of justice” does not mean vague and indeterminate notions of justice, but justice according to the law of the land. (Vide: State Bank of Patiala & Ors. vs. S.K. Sharma, AIR 1996 SC 1669; and Mahadev Govind Gharge & Ors. vs. The Special Land Acquisition Officer, Upper Krishna Project, Jamkhandi, Karnataka, (2011) 6 SCC 321).”

9.2 The Hon'ble Supreme Court in a judgment titled as **Essa @ Anjum Abdul Razak Memom (A-3) vs. The State of Maharashtra, through STF, CBI Mumbai, 2013(13) SCC 456**, has also extensively dealt with the meaning of the words “ends of justice” and enunciated that the same has to be interpreted in a manner so that it serves justice, even handedly to all concerned parties including the CCL in question, victim and his/her family as also the prosecution apart from public at large. It was also observed that the provision of Section 12 of the 2015 Act does assuredly intend to indicate that ordinarily the CCL deserves to be enlarged on bail, subject to the stipulations contained in the proviso to Section 12 of the 2015 Act, but there may be situations where ‘ends of justice’ would require that such a CCL is not released on bail.

9.3 A Coordinate Bench of this Court in **Jatin Vs. State of Haryana, reported as 2024 (2) RCR (Criminal) 143** has also observed that while dealing with the plea for bail under Section 12 of the 2015 Act; the Board is to essentially carry out inquiry with regard to the background of the CCL; atmosphere around routine place of residence of the CCL and other related factors as laid down by the Hon'ble Supreme Court in judgment



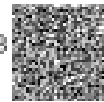
rendered as “XXX Vs. The State of Rajasthan & anr. in Criminal Appeal No.1569 of 2023 (Arising out of SLP (Crl.) No.2981 of 2023), decided on 17.05.2023. It was also observed that needless to state herein that the Social Information Report (SIR), sought in terms of Section 8 of 2015 Act, would be a very pertinent material/factor which is required to be considered by the Board while considering a plea for bail under Section 12 of the 2015 Act. The relevant part of the judgment in *Jatin’s case (supra)* reads as under:-

“9.4 While dealing with a plea for bail under Section 12 of the 2015 Act; the Board is to essentially carry out inquiry regarding the background of the CCL; atmosphere around the routine place of residence of the CCL and other related factors as laid down by the Hon’ble Supreme Court in judgment rendered as “XXX vs. State of Rajasthan (supra).” Needless to state herein that the Social Information Report (SIR), sought in terms of Section 8 of 2015 Act, would be a very pertinent material/factor which is required to be considered by the Board while considering a plea for bail under Section 12 of the 2015 Act. However, since the matter relates to a child, due sensitivity deserves to be exercised by the Board apart from taking requisite steps so as to avoid delay in such adjudication.

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

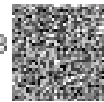
(iii) Such release would defeat the ends of justice.

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.

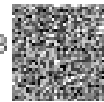
(V) An earnest effort ought to be made by the Board in expeditious decision of a plea for bail made on behalf of CCL and there should not be an inordinate delay in obtaining the SIR etc. since the matter pertaining to a CCL deserves to be dealt with exercising sensitivity, care and caution.”

10. Considering the facts and circumstances of the case on record, I am of the considered opinion that neither the Juvenile Justice Board nor the Appellate Court while passing the impugned orders dated 06.07.2024 and 01.10.2024 respectively have given any reference about the Social Information Report (SIR) i.e. obtained under Section 8 of 2015 Act.

11. Non-reference to the Social Information Report (SIR) has led to miscarriage of justice in view of principles to be followed in administration of 2015 Act as contained in Sections 3, 8 (e) and 12 (1) of the 2015 Act and Section 3 reads as under:-

“3. General principles to be followed in administration of Act-The Central Government, the State Governments, [the Board, the Committee, or] other agencies, as the case may be, while implementing the provisions of this Act shall be guided by the following fundamental principles, namely:-

(i) Principle of presumption of innocence: Any child shall be presumed to be an innocent of any mala fide or criminal intent up to the age of eighteen years.



(ii) Principle of dignity and worth: All human beings shall be treated with equal dignity and rights.

(iii) Principle of participation: Every child shall have a right to be heard and to participate in all processes and decisions affecting his interest and the child's views shall be taken into consideration with due regard to the age and maturity of the child.

(iv) Principle of best interest: All decisions regarding the child shall be based on the primary consideration that they are in the best interest of the child and to help the child to develop full potential.

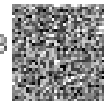
(v) Principle of family responsibility: The primary responsibility of care, nurture and protection of the child shall be that of the biological family or adoptive or foster parents, as the case may be.

(vi) Principle of safety: All measures shall be taken to ensure that the child is safe and is not subjected to any harm, abuse or maltreatment while in contact with the care and protection system, and thereafter.

(vii) Positive measures: All resources are to be mobilised including those of family and community, for promoting the well-being, facilitating development of identity and providing an inclusive and enabling environment, to reduce vulnerabilities of children and the need for intervention under this Act.

(viii) Principle of non-stigmatising semantics: Adversarial or accusatory words are not to be used in the processes pertaining to a child.

(ix) Principle of non-waiver of rights: No waiver of any of the right of the child is permissible or valid, whether sought by the child or person acting on behalf of the child, or a Board or a Committee and any non-exercise of a fundamental right shall not amount to waiver.



(x) Principle of equality and non-discrimination: There shall be no discrimination against a child on any grounds including sex, caste, ethnicity, place of birth, disability and equality of access, opportunity and treatment shall be provided to every child.

(xi) Principle of right to privacy and confidentiality: Every child shall have a right to protection of his privacy and confidentiality, by all means and throughout the judicial process.

(xii) Principle of institutionalisation as a measure of last resort: A child shall be placed in institutional care as a step of last resort after making a reasonable inquiry.

(xiii) Principle of repatriation and restoration: Every child in the Juvenile Justice system shall have the right to be re-united with his family at the earliest and to be restored to the same socio- economic and cultural status that he was in, before coming under the purview of this Act, unless such restoration and repatriation is not in his best interest.

(xiv) Principle of fresh start: All past records of any child under the Juvenile Justice system should be erased except in special circumstances.

(xv) Principle of diversion: Measures for dealing with children in conflict with law without resorting to judicial proceedings shall be promoted unless it is in the best interest of the child or the society as a whole.

(xvi) Principles of natural justice: Basic procedural standards of fairness shall be adhered to, including the right to a fair hearing, rule against bias and the right to review, by all persons or bodies, acting in a judicial capacity under this Act.”

12. Keeping in view the aforesaid facts and circumstances, the impugned order dated 01.10.2024 is not sustainable in the eyes of law.

Consequently, the said order is set aside and the matter is remanded back to the Additional Sessions Judge, Fast Track Special Court under the POCSO Act, 2012, Gurugram, for deciding it afresh after taking into consideration the Social Information Report (SIR) of the petitioner and the decision of the Coordinate Bench of this Court in Jatin's case (supra). Parties to appear before the appellate Court on 25.11.2024.

04.11.2024

monika

Whether speaking/reasoned

Whether reportable

(HARPREET KAUR JEEWAN)

JUDGE

: Yes/No

: Yes/No