

**CRR-2142-2024(O&M)****-1-****126 IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH****CRR-2142-2024(O&M)
Date of Decision: 28.10.2024****HARISH @ HARASH @ JAGGAN****...Petitioner****V/S****STATE OF HARYANA****...Respondent****CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR****Present: Mr. Sahil Kumar Malhotra, Advocate
for the petitioner.****Ms. Geeta Sharma, DAG Haryana.************HARPREET SINGH BRAR J. (Oral)**

1. The present revision petition has been filed against the impugned order dated 27.09.2024 passed by learned Additional Sessions Judge, Bhiwani whereby the appeal against order dated 06.08.2024 passed by the learned Principal Magistrate, Juvenile Justice Board, Bhiwani (hereinafter 'the JJB'), vide which the trial of the petitioner/child in conflict with law was directed to be conducted as an adult in the case stemming from FIR No.32 dated 22.01.2024 registered under Sections 376AB IPC and Section 6 Protection of Children from Sexual Offences Act, 2012 at Police Station Sadar Bhiwani, was dismissed.

2. Briefly, the facts, as alleged by the prosecution, are that on 21.01.2024, the petitioner tricked the victim, a 6 years old girl, into going to a *chopal* with him wherein he raped her. She disclosed the said fact to her mother, upon which FIR(supra) was registered. Since the petitioner was over 16 years of age on the date of the alleged offence, a preliminary assessment under Section



15 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter 'JJ Act') was conducted to establish his mental and physical ability to commit such a heinous act and understand its consequences. Accordingly, the JJB passed an order dated 06.08.24 answered the same in positive and directed the petitioner to be treated as a major and be tried as an adult. Resultantly, the case was transferred to Special Children's Court, Bhiwani. Aggrieved by the same, the petitioner challenged the order dated 06.08.24 before the learned lower Appellate Court, however, the same was dismissed vide impugned order dated 27.09.24.

3. Learned counsel for the petitioner *inter alia* contends that the preliminary assessment under Section 15 of the JJ Act has not been conducted in consonance with the statutory provisions. Nothing available on the record even remotely suggests that the intelligence quotient of the petitioner was ever tested. Further, the social background report has been furnished by the prosecution, without an endorsement by the petitioner. Both the Courts below have failed to consider the fact that the mental capacity of the delinquent juvenile must also be assessed, along with ascertaining his physical capacity to commit the alleged act. In fact, no questions with regard to the ability of the petitioner to understand the consequences of the act were put to him. The entire emphasis has wrongly been placed on just the physical fitness of the petitioner.

4. Learned counsel further contends that the psychological evaluation report(Annexure P-2), furnished by Dr. Suman Pannu, Clinical Psychologist cannot be relied upon in the absence of any objective evaluation with respect to the mental capacity of the petitioner. The psychological evaluation was done on

**CRR-2142-2024(O&M)****-3-**

06.08.2024 itself and submitted before the JJB. The petitioner was not given any opportunity to rebut the same, which violates his right to a free and fair investigation and trial as enshrined under Article 21 of the Constitution of India. Therefore, the impugned order deserves to be set aside as endorsing such an archaic approach would not satisfy the objective standards of reason and justice.

5. Having heard learned counsel for the petitioner and after perusing the record with his able assistance, it transpires that the physical examination of the petitioner was conducted by Dr. Parvinder Kumar on 25.01.24 and it was concluded that nothing observed suggests that he is incapable of performing sexual intercourse. Therefore, the physical capacity of the petitioner to commit the alleged act stands proved. Further, Dr. Suman Panu conducted the psychosocial evaluation of the petitioner and made the following observations in the report dated 06.08.24 (Annexure P-2):

“An average built body young looking boy into the room, normal gait and posture.

Eye contact was maintained, Speech was normal and rapport was established.

Above all findings reported by the boy he was attentive and cognitively stable. His thinking power was goal oriented to his present situation and future actions, overall findings suggesting that he is mentally fit at present and aware about the consequences of his actions.”

6. A study of the report dated 06.08.24(Annexure P-2) clearly suggests that the psychosocial evaluation of the petitioner was duly conducted. Dr. Suman Panu, Clinical Psychologist, has backed the conclusion drawn by her with exhaustive reasoning. Further still, the fact that the petitioner took the victim to a secluded place indicates his knowledge of the consequence of his act.

This conclusion is further strengthened by the fact that during his interaction with the psychologist, the petitioner it was evident of the wrongfulness of the act committed by him and that it would bear negative consequences.

7. In view of the discussion above, this Court does not find any perversity in the impugned order that would warrant any interference. Accordingly, the present petition is dismissed. Pending miscellaneous application(s), if any, shall also stand disposed of.

8. However, nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and the trial Court shall proceed without being prejudiced by observations of this Court.

28.10.2024

Ajay Goswami

(HARPREET SINGH BRAR)

JUDGE

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