

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

230

CRR-2655-2023 (O&M)
Date of Decision: 01.03.2024

CCL S-XXX

....Petitioner

VERSUS

STATE OF HARYANA AND ANR

....Respondents

CORAM : HON'BLE MRS. JUSTICE MANISHA BATRA

Present : Mr. Sachin Kaushik, Advocate for the petitioner.

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

MANISHA BATRA, J. (Oral)

1. Instant petition has been filed by the petitioner against order dated 19.08.2023 passed by Juvenile Justice Board, Sonapat whereby the application for grant of regular bail as filed by him had been dismissed as well as order dated 21.09.2023 as passed by Additional Sessions Judge, Fast Track Court, Sonapat whereby the order of Juvenile Justice Board had been upheld.

2. Brief facts of the case relevant for the disposal of this petition are that the FIR No.396 was registered under Sections 323, 341 354, 354-D 506 and 34 of IPC and Section 8 of POCSO Act at Police Station Kharkhoda, District Sonapat on 28.07.2023, on the basis of complaint lodged by the complainant-s(name withheld) alleging therein that the victim V-(name withheld) who was her youngest daughter aged about 15 years age was being sexually harassed by the petitioner whenever she went or returned from her school. She alleged that her daughter had informed about

this fact to her several times. On 25.07.2023, after returning from school, her daughter again informed her that the present petitioner alongwith some other boys namely Jaibir, Amit, Rohtash and Sagar had intercepted her and misbehaved with her. The complainant apprised about this fact to her husband. Her husband had gone to a nearby shop to buy something when some boys namely Balu, Bhim, Amit and Jaibir etc. waylaid him and extended injuries to him. The complainant also alleged that the co-accused – Vikas also molested her daughter and had been posting her photographs after taking and editing the same from school whatapp group and had been sending vulgar messages on Instagram. After registration of the FIR, the inquiry proceedings had been initiated. As the petitioner is juvenile, therefore, he was detained on 13.08.2023. He was medico legally examined. After completion of inquiry, the final report has been presented against him and presently, he is facing inquiry before the Juvenile Justice Board, Sonapat. He had moved an application for grant of bail before the Juvenile Justice Board which was dismissed as discussed above and the appeal filed against the said order had also been dismissed.

3. It is submitted in the revision petition and it is argued by learned counsel for the petitioner that impugned orders are not sustainable in the eyes of law as he has been falsely implicated in this case. He is in custody since 13.08.2023. His custodial interrogation is not required nor any recovery remains to be effected from him. The inquiry is likely to take considerable time. He being a juvenile in conflict with child, was entitled to concession of bail as a matter of right but this fact has not been considered either by the juvenile justice board or by the First Appellate Court. There is

nothing on record to show that his release on bail would defeat the ends of justice or would expose him any moral or psychological danger. Therefore, it is argued that the impugned orders are liable to be set aside the present criminal revision petition deserves to be accepted and he deserves to be given concession of bail.

4. Per contra learned State counsel has argued that there are serious and specific allegations against the petitioner. There are chances of his intimidating the victim if extended the benefit of bail as she is yet to be examined and while submitting that the release of the petitioner on bail would defeat the ends of justice, he urged that the petition does not deserve to be allowed.

5. It is not in dispute that the petitioner i.e. the child in conflict of law at the time of commission of subject crime, was below the age of 18 years. He has been booked for commission of offences punishable under Section 323, 341 354, 354-D 506 and 34 of IPC and Section 8 of POCSO Act. Learned Juvenile Justice Board while dismissing the plea of grant of bail as filed by the petitioner had observed that the investigation was still pending and his release on bail might cause hinderance in the pace of investigation and by also saying that chances of his influencing, impacting or dissuading the complainant and his fleeing from justice could not be ruled out. It is further revealed that the learned Appellate Court while affirming the order passed by the Juvenile Justice Board had though observed that under the Provisions of Section 12 of the Juvenile Justice Board (Care and Protection of Children) Act, 2015 (For short “Act, 2015”) the grant of bail to a child in conflict with law, was a matter of right and denial thereof was an

exception but still declined to extend benefit of bail to him by observing that there was reasonable apprehension that his release was likely to bring him into association of any known criminal or the possibility of exposing him to moral, physical or psychological danger could not be ruled out and further that his release would defeat ends of justice. However, I am finding myself unable to accept the plea so taken by the Board as well as First Appellate Court while declining the prayer made by the petitioner who is admittedly a child in conflict with law and at the time of commission of subject offence, was below the age of 18 years. 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. The position of law is settled that even if a juvenile in conflict with law 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.PC. Reliance in this regard may be placed upon the subjected as **CCL 'A' v. State (NCT of Delhi)**, 2021 CriLA 1251, wherein similar view was taken.

6. The rule in Section 12 of the Act, 2015 sanctioning bail 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. Where a case against a child in conflict with law is prima facie made out then the rule in Section 12 (1) of the Act, 2015 sanctions bail as a rule, except when the three categories contemplated by the proviso come 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.

7. No doubt, Section 15 of the Act, 2015 provides for transfer of a juvenile to the Appellate 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 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 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 appellant juvenile, 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. As such, in the considered opinion of this Court, the rejection suffers from material irregularity and illegality. The Appellate Court is not shown to have exercised the jurisdiction vested in it keeping in view the object of the Act, 2015. Therefore, finding the impugned order to be unsustainable, the same is set aside.

8. As per the discussion as made above, the criminal revision petition is allowed and the petitioner is ordered to be released on bail and he be given in the custody of his father guardian namely, Bal Kishan, on his filing personal bonds and two sureties of the like amount to the satisfaction of the Court concerned with the undertaking that the father shall keep the juvenile away from unsocial and criminal elements, will look after his health, keeping his mental and social status. He will also give an undertaking that on being released on bail, he will ensure his presence during trial before the Court concerned whenever so required.

9. Office is directed to transmit certified copy of this order to the Court concerned for information and necessary compliance.

01.03.2024

Deepak Patwal

**(MANISHA BATRA)
JUDGE**

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO