

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRR No.2782 of 2023 (O&M)
Date of decision: 05.03.2024
Reserved on: 15.01.2024

Gurkirat Singh @ Vipin ... Petitioner

Vs.

State of Punjab and another ... Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Ajay Pal Singh Rehan, Advocate,
for the petitioner.

Mr. P.S. Pandher AAG, Punjab,
for the respondent-State.

MANISHA BATRA, J.

1. The present revision petition has been filed by the petitioner against the order dated 03.08.2023 as passed by learned Principal Magistrate, Juvenile Justice Board (For short "Board"), Gurdaspur whereby an application filed by the State for treating him as adult in terms of the provisions of Juvenile Justice (Care and Protection of Children) Act, 2015 (For short "Act, 2015") had been allowed and the order dated 31.10.2023 whereby appeal filed by him against the order dated 03.08.2023 had been dismissed by the Court of learned Additional Sessions Judge, Gurdaspur.

2. Brief facts of the case relevant for the purpose of disposal of the present petition are that the FIR No.10 dated 18.03.2022 had been

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registered on the basis of a complaint filed by the prosecutrix (name withheld) alleging therein that her father was serving in police and used to remain posted outside stations whereas her mother used to remain ill. The petitioner had taken her mobile phone number from someone and had started blackmailing her. In the month of March 2021, he along with co-accused Paramjit Kaur and Rupinderjit Kaur, who are his mother and sister respectively, had forcibly entered into her house and an amount of Rs.8 lacs was taken by them from her grandfather by showing pistol to him. By extending threats to her, they had also extracting money from her by getting it transferred through Google Pay. He had also forcibly entered in her house and committed rape upon her. She further alleged that about 20 tolas of gold had also taken by the petitioner and co-accused from her. On the basis of her complaint, a case under Sections 120-B and 376 of IPC and Section 6 of Protection of Children from Sexual Offences Act, 2012 (For short “POCSO Act”) and Section 25 of Arms Act, 1959 was registered. Investigation had started. The petitioner who was found to be a juvenile in conflict with law was detained during the course of inquiry and was produced before the Juvenile Justice Board. Thereafter, an application had been filed by the respondent-State for treating the petitioner as adult and for his trial as such. The learned Principal Magistrate after considering the pleas taken in the application, reply as well as the report of Psychologist, allowed the application by holding that the petitioner had the ability as well as mental and physical capacity to understand the consequences of the alleged offences and,

therefore, he needed to be tried as an adult.

3. Aggrieved by the order passed by the learned Principal Magistrate, the petitioner had filed an appeal as discussed above and the said appeal is also shown to have been dismissed by the Court of learned Additional Sessions Judge, Gurdaspur vide order dated 31.10.2023 by observing that the petitioner was not suffering from any Psychological issues. His IQ is average level of intelligence. He had extracted an amount of Rs.8 lacs from the prosecutrix and her family and had committed act of aggravated penetrative sexual assault with her. While further observing that the learned Principal Magistrate had passed the impugned order within the parameters of the powers granted to it under Section 15 read with Section 18 of the Act, 2015, it was observed that the appeal did not deserve to be allowed.

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

5. The petitioner was admittedly below the age of 18 years as on the date of occurrence. He was between the age bracket of 16 to 18 years. The Board was under a legal obligation to conduct preliminary assessment with regard to the petitioner's mental and physical capacity to commit the offences for which he has been booked and his ability to understand its consequences and also circumstances of such commission of offence. It is revealed from the order passed by the Board that the petitioner was got examined by a Psychologist and his report reflected that his IQ was of average level of intelligence. Even his mother

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informed that he never suffered from psychiatric illness or visited any mental health professional for treatment. As per the report of the Psychologist, on the date of the occurrence or one week prior to that, he did not have any gross psychopathology. There was nothing on record to show that he was suffering from any delusions or his behaviour was hallucinatory. It is reflected from the order passed by the Board that the Psychologist was cross-examined by counsel representing the juvenile at considerable length but nothing could be extracted to shatter the report of the Psychologist. The petitioner was studying in 12th standard and had adopted non-medical stream. Meaning thereby that he was well aware of his actions and its consequences. From the report of the Psychologist and the basis of mental assessment and interaction with the child, the Board formed an opinion that he needed to be tried as an adult and, therefore, had passed the order dated 03.08.2023.

6. Further, the learned Appellate Court while considering the record observed that the allegations against the petitioner were such from where it could not be assumed that he did not understand the consequences of the acts done by him. He has been booked for commission of offences punishable under Section 376 of IPC and Section 6 of POCSO Act. As per Section 2 (33) of the Act, 2015, heinous offences include the offences for which the minimum punishment under IPC is imprisonment of seven years or more. The orders passed by the Board as well as the Appellate Court reveal that all the directions which were required to be fulfilled had been strictly adhered to. As such, the

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order dated 03.08.2023 passed by the Board as well as the order dated 31.10.2023 passed by the Appellate Court that the petitioner possessed mental as well as physical capacity to commit the alleged offences and had also the ability to understand its consequences as well as circumstances, this Court is of the considered opinion that the impugned orders do not suffer from any illegality and are in accordance with law being passed in light of relevant provisions of the Act, 2015 and, therefore, call for no interference. Accordingly, the revision petition is dismissed.

7. Miscellaneous application(s), if any, also stand disposed of.

05.03.2024

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Whether speaking/reasoned
Whether reportable

(MANISHA BATRA)
JUDGE

Yes/No
Yes/No