

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

130/308

CRM-10716-2024 in/&
CRR-2839-2023 (O&M)

Date of decision: 06.03.2024

X (Child in conflict with law)

....Petitioner

V/s

State of Punjab

....Respondent

CORAM: HON’BLE MR. JUSTICE SUMEET GOEL

Present: Ms. Menka Gupta, Advocate for the applicant-petitioner.
Mr. Anup Singh AAG Punjab.

SUMEET GOEL, J. (Oral)

CRM-10716-2024

Application is allowed as prayed for. Social Background Report (SBR) is taken on record as Annexure P-3, subject to all just exceptions. Registry to tag it at the appropriate place.

CRR-2839-2023

1. The petitioner-child in conflict-with-law (hereinafter referred to as ‘CCL’) has filed the present revision petition challenging the order dated 05.09.2023 passed by learned JMIC-cum-Principal Magistrate, Juvenile Justice Board, Rupnagar (hereinafter referred to as ‘Juvenile Justice Board’) and order dated 08.11.2023 passed by learned Sessions Judge, Rupnagar. By way of impugned orders the prayer made on behalf of the CCL for grant of bail has been dismissed.
2. The case set out, in the FIR No.170 dated 12.08.2023 registered under Sections 363, 366, 376, 306, 120-B and 305 of Indian Penal Code (hereinafter to be referred as ‘IPC’) and Section 6 of Protection of Children

from Sexual Offences Act, 2012 (hereinafter to be referred as 'POCSO'), at Police Station City, Ropar (as stated in the petition) is as follows:-

“Copy of statement, 'Statement of Mohammad Sofian S/o Mohamad Usman, R/o H.No.480/1, Meerabai Chowk, Rupnagar, P.S. City Rupnagar, District Rupnagar, aged about 43 years, Mob. No.9501197360. Stated that I am residing as tenant on the abovementioned address. My elder daughter Sonal Seikh whose date of birth was 29 November 2007 and was studying at Govt. Senior Secondary School (Girls), Rupnagar in 11th class (Medical). Yesterday on 11.08.2023 at about 6:00 pm, my daughter when came back from tuition, the she suddenly started weeping to her mother. Regarding which when my wife disclosed to me, then I also reached at my home, where we both asked my daughter about the reason of weeping, who told that today when she was at school, then her one known Aman S/o Sukhvir Singh, R/o H.No.23, Garden Colony near Gurukul School, Rupnagar alongwith his one other companion namely Tavi R/o Preet Colony Rupnagar, took her at about 1:30 pm on the pretext that we have to go to stroll, but thereafter, Aman took her to Sunny's house who is resident of Sehnai Palace Sunny and Tavi left me there and Aman took me in a room and locked from inside and forced with me. Thereafter, Sunny, opened the door to whom I narrated all things, after that Aman left me at School. Due to above incident I am so much upset, but due to fear did not disclose to you. Me and my wife after hearing all this, searched the Aman today and tried to talk with him, but he also did not give any satisfactory answer. My daughter was mentally upset from yesterday, today when I came to city in the search of Aman and my wife was sewing in the room, then at about 1:30 pm, my daughter hanged herself with the fan and committed suicide. My daughter committed suicide due to forced by Aman, in which his friend Sunny and Tavi also helped him. Legal action be taken against Aman, Sunny and Tavi. Statement is written, which is heard and is correct. Sd/- Mohammad Sofiaa. Identified Statement Sd/- Sultan Mohammad (Sultan Mohammad S/o Ismail Khan) Attested Sd/- Swati Dhiman S.I., P.S. City Rupnagar dated 12.08.2023.”

3. Learned counsel for the petitioner has argued that the petitioner was arrested on 12.08.2023 and is in custody since then. Moreover, name of the petitioner surfaced in the disclosure statement of co-accused and such a custodial statement obtained under coercion is not admissible in court. It has

been further submitted that there is no medical evidence or any other proof available from which it may be decipherable that petitioner had committed any wrong act with the victim-deceased. The date of birth of the petitioner has been stated to be 30.12.2006 as per which the CCL is aged about 16 years and 08 months on the date of alleged offence i.e. 11.08.2023. Learned counsel has further stated that after completion of investigation, final report has been filed wherein total 23 prosecution witnesses have been cited. Learned counsel, while relying upon the statutory provision of Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015, has argued that the petitioner ought to have been released on regular bail in the facts and circumstances of the case.

4. Learned State counsel has opposed the present petition arguing that the allegations raised are serious in nature and thus the petitioner does not deserve the concession of the regular bail.

5. I have heard counsel for the parties and have gone through the available records of the case.

6. It would be apposite to refer herein to a judgment of this Court passed in **CRR-2876-2023** titled as ***Jatin vs. State of Haryana***, decided on 30.01.2024; relevant whereof reads as under:-

“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.”

Analysis (re facts)

7. The case set up against the CCL (who was aged about 16 years and 08 months on the date of alleged offence) primarily is that on 11.08.2023, he took the victim-deceased (minor) who was aged about 15 years old, along with co-accused (AN) to the house of another co-accused (S), whereinafter co-accused (AN) forcibly committed rape upon victim-deceased. Final report has been presented against the CCL wherein 23

prosecution witnesses in total have been cited & thus culmination of trial/enquiry will take its own time. There is no material available on record to indicate that there is likelihood of the CCL coming into association with any known criminal or his being exposed to moral/physical/psychological danger. The Social Background Report submitted in the matter shows that the relationship of the CCL with his father, mother and siblings is cordial; the attitude of the CCL towards his classmates is normal; majority of the friends of CCL are educated and are primarily of the same age group; attitude of the CCL towards his friends is normal; the CCL is living in a normal urban locality; the CCL has not been subjected to any form of abuse; CCL is not victim of any offence & that the CCL has never been involved in any kind of illegal activities. The learned JJB, Rupnagar as also the learned Sessions Judge, Rupnagar appear to have rejected the bail of the CCL in question on the ground of the allegations against him being serious & there being high chances of CCL being exposed to moral/physical/psychological danger and decay in case of his being released on bail. However, these findings appear to have been recorded on a mere apprehension and without any material/basis on record. On the contrary, a perusal of the Social Background Report reflects that it would be in the fitness of things especially the overall interest of the CCL that he is released on bail. The mere nature of the offence alleged to have been committed by the CCL does not make it a case calling for rejection of the bail so as to preserve the ends of justice. Moreover, his continued incarceration may affect his moral character; jeopardize his career prospects and he may also be rendered jobless forever. Having a fixed abode, it is unlikely that petitioner poses a

flight risk and/or will flee from trial proceedings. This Court is accordingly of the considered opinion, that in the facts and circumstances of the case in hand, that the petitioner-CCL deserves to be enlarged on bail.

Decision

8. Accordingly the present revision petition is allowed and impugned orders dated 05.09.2023 and 08.11.2023 are set-aside. Petitioner-CCL is ordered to be released on bail on his furnishing requisite bail/surety bonds etc. to the satisfaction of concerned CJM/Duty Magistrate.

It is further directed that such concerned CJM/Duty Magistrate shall be at liberty to impose such further condition(s) as deemed appropriate by him/her while releasing the petitioner-CCL on bail.

9. In case of breach of any of the aforesaid conditions and those which may be imposed by concerned CJM/Duty Magistrate as directed hereinabove or upon showing any other sufficient cause, the State/complainant shall be at liberty to move cancellation of bail of the petitioner.

10. Nothing said hereinabove shall be construed as an expression of opinion on the merits of the case.

11. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(SUMEET GOEL)
JUDGE

March 06, 2024
Ajay

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