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PUNJAB AND HARYANA HIGH COURT

Before: Tejinder Singh Dhindsa, J.

CRR-1103-2020

Decided on: 07.10.2020

Amritpal Singh @ Nikku

Petitioner

Versus

State of Punjab

Respondent

Present:

Mr. Tarun Singla, Advocate for the petitioner.

Mr. A.S.Sandhu, Addl.AG, Punjab for the respondent.

Juvenile Justice (Care and Protection of Children) Act, 2015 (2 of 2016), Section 12 – Indian Penal Code, 1860 (45 of 1860), Sections 376, 34 -- Protection of Children from Sexual Offences Act, 2012 (32 of 2012), Section 8 -- Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (33 of 1989), Sections 3, 4 – Crime against child – Rape case – Regular bail -- Exception has been carved out for declining the bail to the juvenile who is in conflict with law i.e. he or she is likely to come in association with any known criminal or upon release on bail would expose such juvenile to moral, physical or psychological danger or that release of the juvenile would defeat the ends of justice -- For invoking such exception, there has to be some material before the competent authority -- Impugned orders completely bereft of any such reasoning -- No such material/evidence has been adverted to in the order -- Revision petition allowed, impugned orders of both the Courts below set aside -- Petitioner is held entitled to grant of bail under Section 12 of the Act.

(Para 10-14)

Cases referred:

1. Atul Kumar and another v. State of Haryana, 2003(4) RCR (Criminal) 404.

TEJINDER SINGH DHINDSA, J. (ORAL) –

1. Matter has been taken up through Video Conferencing via Webex facility in the light of the COVID-19 situation and as per instructions.

2. The instant revision petition is directed against the order dated 18.05.2020 passed by the learned Additional Sessions Judge, Bathinda whereby the appeal filed by the petitioner against the order dated 17.03.2020 passed by Principal Magistrate, Juvenile Justice Board, Bathinda declining the bail application of the petitioner has been affirmed.

3. Counsel for the parties have been heard at length.

4. Undisputedly, FIR No.26 dated 31.01.2020 under Sections 376, 34 IPC, Section 8 of the Protection of Children from Sexual Offences Act, 2012 and Sections 3 and 4 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 was registered at Police Station Sangat, District Bathinda and in which the present petitioner has been cited as an accused. Case was

lodged on the statement of Jasbeer Kour.

5. It was alleged that on 26.01.2020 at about 8.00 p.m. when the father of the complainant asked her about her mobile phone and thereafter her sister handed over the phone, the father slapped both of them. After that the prosecutrix proceeded to the neighbour's house. Thereafter the prosecutrix was taken away in a car and in a house at village Teona and the accused forcibly committed sexual intercourse.

6. Petitioner admittedly is a juvenile. Bail application preferred by the petitioner has been declined by the Principal Magistrate, Juvenile Justice Board, Bathinda vide order dated 17.03.2020 in terms of taking a view that the allegations against the juvenile are serious and if he is granted the concession of bail, there will be a threat to his life from the complainant side and he would be exposed to moral and psychological danger. Such reasoning would be apparent from the order dated 17.03.2020 itself which has been appended along with the instant revision petition.

7. The appeal preferred by the petitioner has been dismissed by the learned Additional Sessions Judge, Bathinda vide impugned order dated 18.05.2020. The operative portion of the order reads in the following terms :-

“As the accused-applicant is more than 17 years of age, it is clear that he is capable of comprehending what is right and wrong and as such, his release on bail would defeat the ends of justice.

Keeping in view these facts the accused-applicant is not entitled to the concession of bail. There is no illegality or irregularity in the impugned order passed by learned trial Court. Rather the impugned order has been passed on the basis of well established principles of law.

In view of the aforesaid discussion and without elaborating further I am constrained to say that appellant-accused has failed to prove his case and this criminal appeal filed by him under section 52A of Juvenile Justice (Care and Protection of Children) Act 2000 is hereby dismissed being devoid of any merits. Record of lower Court be returned back. Appeal file be consigned to the record room.”

8. Having heard counsel for the parties at length I am of the considered view that the present revision petition deserves acceptance.

9. Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as 'the Act') reads as under :-

“12. Bail of juvenile – (1) When any person accused of a bailable of non-bailable offence, and apparently a juvenile, is arrested or detained or appears or is brought before a Board, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973(2 of 1974) or in any other law for the time being in force, be released on bail with or without surety [for placed under the supervision of a Probation Officer or under the care of any fit institution or fit person] but he shall 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.

(2) When such person having been arrested is not released on bail

under sub-section (1) by the officer incharge of the police station, such officer shall cause him to be kept only in an observation home in the prescribed manner until he can be brought before a Board.

(3) When such person is not released on bail under sub-section (1) by the Board it shall, instead of committing him to prison, make an order sending him to an observation home or a place of safety for such period during the pendency of the inquiry regarding him as may be specified in the order."

10. A bare reading of the provisions reproduced herein above would make it apparent that an exception has been carved out for declining the bail to the juvenile who is in conflict with law i.e. he or she is likely to come in association with any known criminal or upon release on bail would expose such juvenile to moral, physical or psychological danger or that release of the juvenile would defeat the ends of justice. For invoking such exception, there has to be some material before the competent authority on the basis of which, it can be held that the release of the juvenile in the present case would fall within the exception recognised under Section 12.

11. The impugned order dated 18.05.2020 passed by the learned Additional Sessions Judge, Bathinda is completely bereft of any such reasoning. No such material/evidence has been adverted to in the order.

12. Even the order dated 17.03.2020 passed by the Principal Magistrate, Juvenile Justice Board, Bathinda suffers from the same very infirmity.

13. It would be useful to refer to the judgment passed by a coordinate bench of this Court in **Atul Kumar and another v. State of Haryana, 2003(4) RCR (Criminal) 404**, wherein Section 12 of the Act has been considered. In the facts of *Atul Kumar's* case (supra) the offence attributed to the juvenile was under Sections 302, 323, 147 and 149 IPC and while holding the juvenile therein to be entitled to the concession of bail, it was held as follows :-

"I am further of the view that there has to be some evidence on record showing that after the release on bail, the petitioners are likely to come in association with any known criminal or their release on bail would expose them to moral, physical or psychological danger or that their release would defeat the ends of justice. In a given case if the parents of the petitioners are also criminals either ex-convicts or members of a gang, it may be possible for the Court to refuse bail. Another example could be whether the petitioners have repeated the crime showing lapse on the part of the parents after their release while on bail, then the case may be covered by the exceptions carved out under Section 12 of the Act. However, in a case like the one in hand, where no material has been placed on record to show that the release of the 'juvenile in conflict with law' would defeat the ends of justice or any other exception, the petitioners cannot be denied the benefit of bail merely on the basis of conjectures or opinion formed by the prosecution or the Court. Reliance in this regard could be placed on the judgments in the case of *Sahabuddin @ Shabboo's* case (supra) and *Sanjeev Kumar's* case (supra)."

14. For the reasons stated above, the instant revision petition is allowed. The impugned orders of both the Courts below are set aside. Petitioner is held entitled to grant of bail under Section 12 of the Act.

15. Accordingly, it is directed that the petitioner be released on bail subject to furnishing bail bonds to the satisfaction of Chief Judicial Magistrate/Duty Magistrate, Bathinda.

16. Petition is allowed in the aforesaid terms.

Petition allowed.



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