

MANU/PH/0019/2017

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No. 28207 of 2016 in/and CRR No. 3248 of 2016

Decided On: 23.01.2017

Appellants: **Pardeep**
Vs.
Respondent: **State of Haryana**

Hon'ble Judges/Coram:

Mahesh Grover and Dr. Shekher Dhawan, JJ.

Counsel:

For Appellant/Petitioner/Plaintiff: Navneet Singh, Advocate

For Respondents/Defendant: Vivek Saini, DAG

JUDGMENT

Mahesh Grover, J.

1. The petitioner, who is a juvenile and lodged in Special Home at Ambala, prays that he be released on bail by suspending his sentence as out of 3 years of stay in a Special Home mandated by the Court of learned Additional Sessions Judge who tried him for an offence under Sections 302, 201, 120-B IPC pursuant to FIR No. 377 dated 10.05.2007 Police Station Samalkha, he has spent 2 years and 4 months in the Special Home and with the revision directed against the judgment of the learned Additional Sessions Judge, Panipat dated 21.07.2016 which is unlikely to be heard in the near future, and, if not released, he would suffer immense consequences virtually rendering the remedy of impugning the judgment illusory as by that time he would have completed his entire period of stay.

2. The factum of the petitioner being a juvenile is not in dispute. The only question that needs to be determined is as to whether the juvenile can be released from the Special Home albeit temporarily during the pendency of his revision by suspending his sentence in the terms envisaged under Section 389 Cr.P.C.

3. The learned counsel for the applicant has styled his prayer as suspension of sentence and thus the court is concerned with a larger issue of considering whether a stay in a reform home mandated by a court trying the juvenile for a serious criminal offence can be termed as a sentence within the meaning of the Code of Criminal Procedure to permit applicability of consequential procedures of law including suspension of conviction and sentence. Section 18 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as 'the Act') provides for the consequences to be visited on a juvenile in conflict with law after his trial.

"18. Orders regarding child found to be in conflict with law.--

(1) Where a Board is satisfied on inquiry that a child irrespective of age has committed a petty offence, or a serious offence, or a child below the age of sixteen years has committed a heinous offence, then, notwithstanding anything contrary contained in any other law

for the time being in force, and based on the nature of offence, specific need for supervision or intervention, circumstances as brought out in the social investigation report and past conduct of the child, the Board may, if it so thinks fit,-

(a) allow the child to go home after advice or admonition by following appropriate inquiry and counselling to such child and to his parents or the guardian;

(b) direct the child to participate in group counselling and similar activities;

(c) order the child to perform community service under the supervision of an organisation or institution, or a specified person, persons or group of persons identified by the Board;

(d) order the child or parents or the guardian of the child to pay fine:

Provided that, in case the child is working, it may be ensured that the provisions of any labour law for the time being in force are not violated;

(e) direct the child to be released on probation of good conduct and placed under the care of any parent, guardian or fit person, on such parent, guardian or fit person executing a bond, with or without surety, as the Board may require, for the good behaviour and child's well-being for any period not exceeding three years;

(f) direct the child to be released on probation of good conduct and placed under the care and supervision of any fit facility for ensuring the good behaviour and child's well-being for any period not exceeding three years;

(g) direct the child to be sent to a special home, for such period, not exceeding three years, as it thinks fit, for providing reformatory services including education, skill development, counselling, behaviour modification therapy, and psychiatric support during the period of stay in the special home:

Provided that if the conduct and behaviour of the child has been such that, it would not be in the child's interest, or in the interest of other children housed in a special home, the Board may send such child to the place of safety.

(2) If an order is passed under clauses (a) to (g) of sub-section (1), the Board may, in addition pass orders to-

(i) attend school; or

(ii) attend a vocational training centre; or

(iii) attend a therapeutic centre; or

iv) prohibit the child from visiting, frequenting or appearing at a specified place; or

(v) undergo a de-addiction programme.

(3) Where the Board after preliminary assessment under section 15 pass an order that there is a need for trial of the said child as an adult, then the Board may order transfer of the trial of the case to the Children's Court having jurisdiction to try such offences."

4. Evidently, the legislative intent of confining a juvenile in conflict with law to a special home or a remand home is to render reformatory justice by weaning away a juvenile from his propensity to commit an offence.

5. Indeed, it can be argued that this strictly does not come within the ambit of definition of a sentence for it is not accompanied with a punitive element stemming from retributive justice and necessary intended consequence of sentencing of an adult.

6. But even in retributive justice the underlying principle is of reforming a convict, and the confinement directed at a juvenile in a reformatory home would be a clone of sentencing with all attending trappings of a forced confinement if as awarded to an adult in conflict with law, but coupled with rehabilitative processes envisaged in Section 18 (reproduced above).

7. We have thus to examine whether a 'stay' in the reform home can be suspended during the pendency of a challenge mounted by the juvenile against the judgment which pronounces him guilty of being in conflict with law to mandate a limited stay in the reform home.

8. We are of the opinion that his stay in the reform home is evidently not a willful course to which the juvenile in conflict with law has submitted himself and thus any 'imposed stay' under the orders of a court would essentially have the effect of deprivation of liberty which de-links a juvenile from comforts afforded by his natural abode in the company of his near and dear ones. It propels him into the company of unknown people amidst an alien environment which would carry the same trauma of a detention in prison.

9. We are not oblivious to the ground reality that even though reform homes talk of laudable objectives of reforming a juvenile in conflict with law through behavioural counselling, the honesty and intensity of such efforts is either lacking altogether or too infrequent to be of any consequence to the cause of reforming a young mind. Neither are the juvenile homes equipped with such professional counsellors with acumen and dedication nor are the conditions of the reform homes friendly enough to offer any comfort to a juvenile in conflict with law.

10. We have thus to examine the case of a release of a juvenile in conflict with law while he awaits a final decision from this court in proceedings where he has questioned the legitimacy and validity of the finding of his guilt in the commission of an offence in relation to the existing law in particular the provisions of Section 18.

11. We would have no hesitation to say that confinement of a juvenile in a remand/reform home is necessarily a curtailment of his individual rights and the

courts would lean towards ensuring his liberty even though temporarily for a period to be specified while ordering so, coupled with directions to ensure the ingredients of Section 18 i.e. counselling skill development etc. while he awaits a final verdict from the courts.

12. It would be a travesty of justice if the juvenile is denied this liberty to permit him to languish in a place where he would not have entered except for the orders of the court and in the event of his being declared innocent subsequently, the judicial system would have to answer for the unwarranted incarceration. The instant case is a classic test for out of 3 years the juvenile has already undergone 2 years and 4 months with his revision still to be heard.

13. The courts would thus be extremely circumspect in considering such prayers made by a juvenile in conflict with law so as to ensure either expeditious disposal to the challenge made by the juvenile qua his guilt and simultaneously sympathetically consider his prayer for temporary release by ensuring that the provisions of Section 18 of the Act are complied with in letter and spirit. Rather, it has to be the Board itself which has been endowed with ample powers where it has to constantly monitor the development of a juvenile through Probation Officers and if he shows a behavioural improvement and there are sufficient indicators of his remorse and equally sufficient safeguard of his not repeating the default, then the Board would have adequate power in terms of the afore-extracted provisions of law to warrant modification of the prescribed period. On the same logic the Courts would also proceed to ensure the objective of rehabilitative justice.

14. We would thus while accepting the prayer for release of the juvenile from the special home for a period of one month also direct that he be kept in strict vigilance of the Probation Officer who shall file his report every fortnight if not weekly to the Board to scrutinize the conduct of the juvenile in question.

15. The application is accepted and the juvenile is directed to be released from Special Home, Ambala as above.

16. The revision petition in turn is directed to be set down for final disposal on 07.02.2017.

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