

MANU/PH/0668/2016

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Revn. No. 1418 of 2016

Decided On: 28.04.2016

Appellants: **Ronak**

Vs.

Respondent: **State of Haryana**

Hon'ble Judges/Coram:

Daya Chaudhary, J.

Counsels:

For Appellant/Petitioner/Plaintiff: P.S. Poonia, Advocate

For Respondents/Defendant: B.S. Virk, DAG

JUDGMENT

Daya Chaudhary, J.

1 . The present revision petition has been filed to challenge judgment dated 16.3.2016 passed by Juvenile Justice Board, Rohtak as well as judgment dated 1.4.2016 passed by Additional Sessions Judge, Rohtak, whereby, the bail of the petitioner has been declined.

2 . Briefly, the facts of the case are that the petitioner was arrested on 9.3.2016 in case FIR No. 4 dated 8.1.2016 registered under Sections 363,366-A,376-D IPC and Section 6 of POCSO Act at Police Station Women, Rohtak on the basis of application submitted by Samay Singh Saini stating therein that his niece used to go for tuition in the evening every day but on 7.1.2016, neither she returned home from the tuition nor she picked up her mobile phone. At about 10.30 pm, she returned home and disclosed that she was kidnapped by two boys and was dragged in the car and rape was committed upon her. One of the boy also sent a text message to her to meet but later on same was deleted from her mobile number. On the basis of information given by the victim to the complainant, aforesaid FIR was registered. During the course of investigation, the statement of the victim under Section 164 Cr.P.C was recorded and the petitioner being juvenile in-conflict with law was sent for inquiry before the Principal Magistrate, Juvenile Justice Board, Rohtak. Thereafter, an application under Section 12 of Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as 'the Act, 2000') for grant of bail was moved before Principal Magistrate, Juvenile Justice Board, Rohtak but the same was dismissed on 16.3.2016. Aggrieved by the said order, the petitioner-jvenile filed an appeal before the Additional Sessions Judge, Rohtak, which was also dismissed on 1.4.2016 on the ground that in case the juvenile is released on bail then his release can bring him in the association of the person with moral and physical danger. It was also mentioned in the order that the offence is very serious and it will be safer to protect the petitioner-jvenile from the collective wrath of the community or society and purpose of ends of justice will be defeated in case he is released on bail.

3 . Aggrieved by the aforesaid two judgments of the Courts below, the present revision petition has been filed.

4 . Learned counsel for the petitioner contends that a wrong finding has been

recorded that the release of the petitioner would bring him in association with criminals, whereas, nothing concrete has been placed on record to substantiate the same. Learned counsel further submits that the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as 'the Act, 2015') came into force on 15.1.2016 and its provisions cannot be made applicable to the offence committed prior thereto as the date of commission of offence in the present case is 7.1.2016 and as such the provisions of the Act, 2000 would be applicable. Learned counsel also submits that as per medical examination report of the prosecutrix, there was no mark of injury on her person. The petitioner is not involved in any other case and is not having any criminal background. He is a school going student and will not come in contact of hard core criminals in any manner. The investigation of the case has been completed as the challan has already been presented before the Court and petitioner being permanent resident of District Jhajjar is not likely to flee away from the course of justice. It is also the submission of learned counsel that the petitioner himself or any other person on his behalf will undertake that he will not temper with the prosecution evidence in any manner. Learned counsel has also relied upon the judgments of this Court in the case of Sandeep @ Sipi v. State of Punjab (Crl. Revn. No. 466 of 2016, decided on 11.2.2016), Vijay Kumar @ Chhotu (minor) through his mother v. State of Punjab (Crl. Revn. No. 424 of 2016, decided on 29.2.2016) and Bittu v. State of Haryana MANU/PH/3465/2014 : 2015 (2) RCR (Criminal) 316, in support of his contentions.

5. Learned counsel for the respondent-State opposes grant of bail to the petitioner on the ground of seriousness of the offence.

6. Heard the arguments advanced by learned counsel for the parties and have also gone through the impugned orders as well as allegations levelled against the petitioner in the FIR.

7. The facts of lodging of the FIR, age of the victim as well as of the accused are not disputed. The application for grant of bail moved by the petitioner-juvenile before the Principal Magistrate, Juvenile Justice Board, Rohtak was dismissed and thereafter an appeal filed against said order was also dismissed by Additional Sessions Judge, Rohtak. The bail of the petitioner has been declined on the ground that it would deny the ends of justice, would bring him in association with known criminals and will also expose him to moral, physical and psychological danger. Admittedly, the date of occurrence is 7.1.2016 and as such the Act of 2000 shall be applicable. Section 12 of the Act, 2000 deals with bail to juvenile, which reads as under:--

"12. Bail of juvenile.--

(1) When any person accused of a bailable or 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 1 [or placed under the supervision of a Probation Officer or under the care of any fit institution of 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."

8 . The Principal Magistrate, Juvenile Justice Board, Rohtak vide order dated 16.3.2016 declined bail to the petitioner on the ground that he may come in contact with known criminals but no such material has been relied upon to show as to how he would come in contact with known/harsh criminals.

9 . Similarly, the appeal filed against aforesaid order has also been dismissed by Additional Sessions Judge, Rohtak vide its judgment dated 1.4.2016 on the ground that release of the petitioner would bring him in association with known criminals or expose him to moral, physical or psychological danger.

10 . In the present case while declining the bail, the relative provisions have not been considered by both the Courts below, whereas, as per provisions of Section 12 of the Act, 2000, the Juvenile is entitled to bail as a matter of right unless the case falls in the exceptions carved out in the provision itself but nothing was available on record to show that any of the three exceptions prescribed under Section 12 (1) of the Act, 2000 was existing.

11 . The word "association" has been defined in Concise Oxford Dictionary (6th Edition) as an act of associating; organised body of persons for a joint purpose; fellowship, companionship; mental connection between related ideas.

12 . The above meaning of word "association" has also been adopted in Legal Glossary, Government of India, 1988 Edition.

13 . Thus, to prove "association", it must be shown that the persons so joined, have a common purpose and that there is a mental connection between their related ideas. In such view of the matter, if a person has joined a known criminal or criminals only in a single case, by that, it cannot be inferred that this single act would bring that person in association with known criminal (s). There can be apprehension of his associating with known criminal (s) only when there is sufficient evidence to show that he has been joining them regularly so as to give an impression that he would continue to join them in future also.

14 . The petitioner in the present case is stated to be the student and his family is not having any criminal background as nothing in this regard has been mentioned in both the orders while declining bail and it has not come on record that the social investigation report sent to the Court by Probation Officer is unfavourable to the juvenile for his release on bail. Moreover, the father of the petitioner has come forward for giving an undertaking that the petitioner will not be involved in any criminal activities till he continues on bail. The object of the Act is to provide care, protection, development and rehabilitation of neglected and delinquent juveniles.

15 . A perusal of Section 12 of the Act, 2000 reveals that it incorporates a non-obstante clause which means that irrespective of anything contained in the Code of Criminal Procedure or in any other law for the time being in force, a juvenile in conflict with law has to be released on bail; refusal of bail is possible only in three eventualities which are well-explained in Section 12 of the Juvenile Act itself. It, thus, follows that refusal of bail to a juvenile is to be ordered only in any of the three situations specified under Section 12(1) of the Juvenile Act. These three situations

reads as below:

"(i) if there appear reasonable grounds for believing that the release of the juvenile is likely to bring him into association with any known criminal;

(ii) the release will expose the juvenile to moral, physical or psychological danger; and,

(iii) his release would defeat the ends of justice."

16. Even while denying the benefit of bail to a juvenile in conflict with law, the court has not only to refer to one or more of these three grounds but also to record its satisfaction founded on some relevant material, availability of which has to be shown on the record.

17. It, thus, implies that no reasons other than those mentioned in Section 12(1) of the Juvenile Act are to be valid for refusal of bail. Since gravity of the offence is not incorporated as one of the reasons for refusal of bail, this ground cannot be taken into consideration for rejection of request for bail.

18. A perusal of order passed by Principal Magistrate, Juvenile Justice Board, Rohtak, transpires that rejection of bail has been ordered primarily on the ground of gravity of offence and an attempt has also been made to justify refusal on the ground that "ends of justice would be denied if bail is granted" but no such material has been referred to while arriving at such a conclusion.

19. Mere reproduction of language of Section 12 (1) of the Act, 2000 in order to reject the application for bail would not be in tune with the letter and spirit of the law relating to bail of the juveniles in conflict with the law. Not only the Principal Magistrate, Juvenile Justice Board, Rohtak went wrong in denying the bail but the appellate authority has also dismissed the bail without mentioning any reason or circumstances.

20. By taking into consideration the aforesaid facts of the case, it has neither come in the orders passed by both the Courts below nor in the argument raised by learned counsel for the respondent-State to show as to how the petitioner would come in contact with hard core criminals.

21. Hon'ble the Apex Court in the case of Swati Maliwal Jaihind Chairperson Delhi Commission of Women v. Raju through Juvenile Justice Board and others 2016 (1) Recent Apex Judgements 18 has held in as under:--

"Rule 17 (3) provides that the release shall be as per the prerelease and post-release plan prepared under the Individual Care Plan and reviewed from time to time by the Management Committee set up under Rule 55. Rule 50 (12) provides for developing an individual care plan with the ultimate aim of the child being rehabilitated and reintegrated based on their case history, circumstances and individual needs. Such individual care plan specifically needs consultation with the concerned juvenile while determining his care plan. Rule 55 makes it mandatory for the Management Committee to consider and review periodically post-release or post restoration follow up. Rule 65 also provides for a detailed procedure of restoration of the juvenile back to the family and follow-up action by the Juvenile Justice Board. It also includes when a juvenile expresses his unwillingness to be restored back to the family, the Board shall make a note of it in its records in writing and such juvenile shall not be coerced or persuaded to go back to the Probation Officer

establishes that restoration to family may not be in the best interest of the juvenile or if the parents or the guardians refuse to accept the juvenile back. The said Rule also provides for submitting a quarterly follow-up report to the JJB by the concerned Child Welfare Officer or Probation Officer or the non-governmental organization for a period of two years. The follow-up report shall clearly state the situation of the juvenile post restoration and the juvenile's needs to be met by the State Government in order to reduce further vulnerability of the juvenile."

22. Similar view was observed in cases *Manoj Singh v. State of Rajasthan* 2004 (2) RCC 995, *Lal Chand v. State of Rajasthan* 2006 (1) RCC 167, *Prakash v. State of Rajasthan* MANU/RH/0549/2005 : 2006 (2) RCR (Criminal) 530 and *Udaibhan Singh @ Bablu Singh v. State of Rajasthan* 2005 (4) Crimes 649.

23. In view of the totality of the facts of the case and law position as discussed above, both the Courts below have not satisfied the requirement of provisions of Section 12 (1) of the Act, 2000 and without having any material on record, the bail application of the petitioner has been declined. The impugned orders are not sustainable in the eyes of law and as such the same are liable to be quashed.

24. Accordingly, the present revision petition is allowed and the impugned orders i.e. order dated 16.3.2016 passed by the Principal Magistrate, Juvenile Justice Board, Rohtak and order dated 1.4.2016 passed by the Additional Sessions Judge, Rohtak are hereby set aside. The petitioner is directed to be released on bail subject to the following conditions:--

i) the petitioner is placed under supervision of the probationary officer, who shall file periodical reports over the Juvenile before the Board till the inquiry against him is completed in the proceedings.

ii) the father of the petitioner shall stand as a surety for release of petitioner on bail. He shall execute a bond for ' 10,000/-undertaking good conduct of juvenile and also his keeping away or associating with criminals while he continues on bail in the present proceedings.

iii) the petitioner and his father shall report before the Juvenile Justice Board as and when directed without default till the proceedings are over.

iv) in the event of any adverse report filed against the juvenile by the probation officer or on any default or violation of the condition imposed above, it is open to the Juvenile Justice Board to revoke the bail granted to petitioner without having any further orders from this Court, but, in accordance with law."

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