

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

CRR No.53 of 2021 (O&M)

Date of Decision.08.02.2021

(Heard through VC)

...Petitioner

Vs

State of Punjab

...Respondent

CORAM:HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Aayush Gupta, Advocate
for the petitioner.

Ms. Rashmi Attri, DAG, Punjab.

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JAISHREE THAKUR J. (ORAL)

1. The present revision petition has been filed to challenge the impugned order dated 22.06.2020 passed by the Juvenile Justice Board, Ludhiana, whereby, the bail to the present petitioner aged 15 years (who has already been declared juvenile) has been declined and the same has been affirmed by Additional Sessions Judge, Ludhiana vide judgment dated 07.08.2020. The petitioner, being juvenile, has prayed for setting aside the impugned orders passed by both the Courts below.

2. The case of the petitioner is that he was arrested in FIR No.94 dated 17.05.2020 registered under Sections 307, 376, 457, 511 IPC at Police Station Division No.7, Ludhiana. He moved an application for grant of bail before Juvenile Justice Board, but the same was dismissed. The appeal preferred by him before the Additional Sessions Judge, Ludhiana was also dismissed.

3. Learned counsel for the petitioner submits that the bail

application of the petitioner has been dismissed by both the Courts below only on the ground that the prosecutrix/complainant stated that she was attacked by the juvenile and that he attempted to commit rape on her, and if released on bail he would come in close proximity to her as he resides near to the house of the complainant; and he may be exposed to moral and psychological danger and also his release would defeat the ends of justice, whereas, no such finding was recorded as to how he will come in contact with criminals and how he will be exposed to moral, physical or psychological danger, or that his release would defeat the ends of justice. Learned counsel also submits that the petitioner is a student and he is not a previous convict nor is associated in any kind of un-social or criminal activities. It is further argued that nothing has been brought on record so as to show that the petitioner is having any criminal background or any criminal case has been registered against any of his family member.

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

5. I have heard learned counsel for the parties and have also perused the impugned orders as well as the allegations levelled in the FIR. Admittedly, on the basis of the allegations levelled in the complaint, the FIR, in question, was registered against the petitioner. The petitioner was tried by Juvenile Justice Board, where, he moved an application for grant of bail, being juvenile, which was dismissed. Thereafter, an appeal filed against the said order before the Additional Sessions Judge, Ludhiana was also dismissed. The petitioner has been declined bail on the ground that in case, he is released on bail, he would come in association with known

criminals and would be exposed to moral, physical and psychological danger apart from defeating the ends of justice.

6. Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (here-in-after referred to as 'J.J. Act') is relevant in the present controversy, which is reproduced as under :-

“12. Bail to a person who is apparently a child alleged to be in conflict with law.

(1) When any person, who is apparently a child and is alleged to have committed a bailable or non-bailable offence, is apprehended or detained by the police or appears or brought before a Board, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 or in any other law for the time being in force, be released on bail with or without surety or placed under the supervision of a probation officer or under the care of any fit person:

*Provided that such person shall not be so released if there appears reasonable grounds for believing that the release is likely to bring that person into association with any known criminal or expose the said person to moral, physical or psychological danger or the person's release would defeat the ends of justice, **and the Board shall record the reasons for denying the bail and circumstances that led to such a decision. (emphasis supplied)***

(2) When such person having been apprehended is not released on bail under sub-section (1) by the officer-in-charge of the police station, such officer shall cause the person to be kept only in an observation home in such manner as may be prescribed until the person can be brought before a Board.

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

(4) When a child in conflict with law is unable to fulfill the conditions of bail order within seven days of the bail order, such child shall be produced before the Board for modification of the conditions of bail.’’

7. From a bare reading of the provisions of Section 12 of the J.J.

Act, it appears that the intention of the legislature is to grant bail to the juvenile irrespective of the nature or gravity of the offence alleged to have been committed by him, and bail can be declined only in such cases where reasonable grounds are there for believing that the release is likely to bring the juvenile into association of any known criminal or expose him to moral, physical or psychological danger, or that his release would defeat the ends of justice. Meaning thereby, as per aforesaid provision, a juvenile can be denied the concession of bail, if any of the three contingencies specified under Section 12 (1) of the J.J. Act is available. Similar view was observed in cases **Manoj Singh vs State of Rajasthan 2004(2) RCC 995, Lal Chand v. State of Rajasthan 2006(1) RCC 167, Prakash v. State of Rajasthan 2006(2) RCR (Criminal) 530 and Udaibhan Singh alias Bablu Singh v. State of Rajasthan 2005(4) Crimes 649.**

8. Learned counsel for the respondent-State has also not pointed out any material available on record to show that there are reasonable grounds for believing that the petitioner is likely to come into the association of any known criminal if released on bail, or his release will expose him to moral, physical or psychological danger. The order passed is mechanical and without adhering to the provisions of Section 12 (1) of the J.J. Act, which specifies that *'the Board shall record the reasons for denying the bail and circumstances that led to such a decision.'*

9. In view of the totality of the facts and circumstances of the case and law position as discussed above, I am of the view that both the Courts below have not satisfied the requirement of provisions of Section 12(1) of the J.J. Act and without adhering to material on record, the bail application

of the petitioner has been declined. Petitioner is in custody since the date of filing of the FIR i.e. 17.05.2020 and no purpose will be served, in case, he is kept in custody. The impugned orders are not sustainable in the eyes of law and as such, are liable to be set aside.

10. Accordingly, the present revision petition is allowed and the impugned orders i.e order dated 22.06.2020 passed by the Juvenile Justice Board, Ludhiana, and order dated 07.08.2020 passed by the Additional Sessions Judge, Ludhiana are hereby set aside. The petitioner is directed to be released on bail subject to his furnishing adequate bail bond/surety bonds amounting to Rs.50,000/- through his natural guardian or near relative to the satisfaction of the Principal Magistrate, Juvenile Justice Board, Ludhiana.

11. Before parting with this order, it is imperative to bring forth that while sitting in the criminal roster, this Court came across numerous cases where orders declining bail to the juveniles are being passed by the J.J. Boards in a mechanical manner, being wholly influenced with the gravity of offence and the manner in which the alleged offence is committed by the Child in Conflict with law, and so has the approach been of the Appellate Courts. This case is also one of such kind.

12. The Supreme Court and various High Courts, time and again have reiterated the well settled position of law, that gravity of offence is immaterial in deciding the bail application. Bail of a child in conflict with law cannot be rejected in a routine manner and if the bail is declined, a reasoned order has to be given by the Board. A juvenile has to be released on bail mandatorily unless and until the exceptions carved out in proviso to Section 12 (1) of the J.J. Act, 2015 itself are made out. The exceptions are

noted being:-

- a) *a reasonable ground for believing that the release is likely to bring the juvenile into association with any known criminal;*
- b) *his release is likely to expose him to any moral, physical or psychological danger; and*
- c) *his release would defeat the ends of justice.*

13. The Delhi High Court in **Nand Kishore (in JC) Vs. State 2006**

(4) RCR (Criminal) 754 while dealing with the first exception held that ‘as regards first exception, before it can be invoked to deny bail to a juvenile there must be a reasonable ground for believing that his release is likely to bring him into association with any known criminal. The expression ‘known criminal’ is not without significance. When the liberty of a juvenile is sought to be curtailed by employing the exception, the exception must be construed strictly. Therefore, before this exception is invoked, the prosecution must identify the ‘known criminal’ and then the court must have reasonable grounds to believe that the juvenile, if released on bail, would associate with this ‘known criminal’. It cannot be generally observed that the release of the juvenile would bring him into association with criminals without identifying the criminals and without returning a, prima facie, finding with regard to the nexus between the juvenile and such criminal...”

Similarly, in **Manmohan Singh Vs. State of Punjab (2004) 136 PLR 497**, this High Court has observed as under:-

“7.The reasonable grounds for believing that his release is likely to bring 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, should be based upon some material/evidence available on the record. It is not a matter of subjective satisfaction but while declining the bail to the juvenile on the said ground, there

must be objective assessment of the reasonable grounds that the release of the juvenile is likely to bring him in association with any known criminal or expose him to more, physical or psychological danger or that his release would defeat the ends of justice...

*8. In **Sanjay Kumar's case (supra)** it has been held by the Allahabad High Court that every juvenile ,whatever offence he is charged with, shall be released on bail but he may, however, be refused bail if there appears reasonable ground for believing that the release is likely to bring him into association with the any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice and that the existence of such ground should not be mere guess work of Court but it should be substantiated by some evidence on record."*

14. The third exception namely 'ends of justice being defeated' has to be considered in the context of the welfare of the juvenile, as has been held by the **Delhi High Court in Master Abhishek (Minor) Vs. State (Delhi) 2005 VI AD Delhi 18.**

15. According to Section 13 (1) (ii) of the J.J. Act, 2015, the Probation Officer has to be informed as soon as the child is apprehended and to prepare a social investigation report. The J.J. Board calls for a Social Investigation Report, which has been defined in Rule 2 (xvii) of the Juvenile Justice (Care and Protection of Children) Model Rules, 2016. This report becomes vital for the inquiry to be done by the Board while passing such orders in relation to such child as it deems fit under sections 17 and 18 of this Act. The purpose behind this provision is to enable the J.J. Board to get a glimpse of the social circumstances of the child, before any order regarding bail or of any other nature is passed. The Juvenile Justice (Care and Protection of Children) Model Rules, 2016 contain a detailed pro forma of the Social Investigation Report. The report has three parts; the first part requires the Probation Officer to give the data or information regarding the

close relatives in the family, delinquency records of the family, social and economic status, ethical code of the family, attitude towards religion, relationship amongst the family members, relationship with the parents, living conditions etc. Thereafter, the report requires the Probation Officer to provide the child's history regarding his mental condition, physical condition, habits, interests, personality traits, neighbourhood, neighbours' report and school, employment, if any, friends, child being subject to any form of abuse, circumstances of apprehension of the child, mental condition of the child. Most important part of the report is the third part i.e. the result of inquiry where the Probation Officer is required to inform the Board about the emotional factors, physical condition, intelligence, social and economic factors, suggestive cause of the problems, analysis of the case including reasons/contributing factors for the offence, opinion of experts consulted and recommendation regarding rehabilitation by the Probation Officer/Child Welfare Officer.

16. The social investigation report is not for discovering evidence regarding the alleged offence. The focus of the social investigation report is to identify and understand the circumstances of the child in question, and what may have led to the alleged crime. The report would also enable the Board to come to a decision as to whether there are any grounds of denying bail, as per the proviso to Section 12 (1) of the J.J. Act, 2015. Therefore, it is incumbent upon the J.J. Board to take into consideration the social investigation report and make an objective assessment of the reasonable grounds for rejecting the bail application of the juvenile.

17. In view of the observations made herein above by this Court,

all the Juvenile Justice Boards across the States of Punjab and Haryana and the Union Territory, Chandigarh are directed to record its reason for declining bail and the circumstances that led to such a decision. Needless to say that the said decision shall be founded on the basis of Social Investigation Report submitted by the Probation Officer, as per the pro forma contained in the Juvenile Justice (Care and Protection of Children) Model Rules, 2016 and any other material available before it and not merely on the basis of records of the case and report filed under Section 173 Cr.P.C. of the investigation officer.

18. Let a copy of this order be circulated to all the Juvenile Justice Boards across the States of Punjab & Haryana and the Union Territory, Chandigarh for compliance.

(JAISHREE THAKUR)
JUDGE

February 08, 2021
Pankaj*

Whether speaking/reasoned Yes/No

Whether reportable Yes/No