

Law Today Live Doc. Id. 15682

PUNJAB AND HARYANA HIGH COURT

Before: Sudip Ahluwalia, J.

CRR-1283-2020

Decided on: 04.12.2020

Poojaram Yadav (minor)

Petitioner

Versus

State of Haryana

Respondent

Present:

Mr. Nipun Vashist, Advocate, for the petitioner.

Mr. Anmol Malik, DAG, Haryana.

Juvenile Justice (Care and Protection of Children) Act, 2015 (2 of 2016), Section 12 -- Petitioner is originally a resident of U.P., and presently was residing with his father in New Delhi, which falls in a different State from where the trial is taking place, i.e. Gurugram in Haryana – JJ Board declined bail by saying the petitioner may have to face revulsion and outrage from members of the society on surmises and conjectures -- Ld. ASJ upheld the decision by saying release would associate him with known criminals and it would expose him to moral, physical or psychological danger, whereas JJ Board never speculated upon such possibility – Held, petitioner who is a juvenile and has already remained in detention for a period of one year, one month and twenty days by now, should be released on bail – Revision allowed.

(Para 5-8)

Cases referred:

1. Axxx (Juvenile) Vs. State of Haryana, CRR-1005-2020 decided on 04.08.2020.

SUDIP AHLUWALIA, J. (ORAL) –

The present revision petition has been preferred against the impugned order dated 13.11.2020, passed by the Ld. Additional Sessions Judge (Fast Track Court), Gurugram, vide which original order dated 06.11.2020, passed by the Principal Magistrate, Juvenile Justice Board, Gurugram, rejecting the petitioner's prayer for bail was upheld.

2. Contention raised on behalf of the petitioner in this regard is that being a juvenile, he is entitled to be released on bail, and in the facts and circumstances of the present case, there is no existence of any of the three ingredients, in which case bail can be denied to a juvenile. For this purpose, attention of the Court has been drawn to Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015, which provides as under:-

“When any person who is apparently a child and is alleged to have committed 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 (2 of 1974) 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 decision.

3. Reliance has also been placed upon the decision of a Co-ordinate Bench of this Court in the case bearing **CRR-1005-2020** titled "**Axxx (Juvenile) Vs. State of Haryana**", decided on **04.08.2020**, in which it was observed *inter alia* that:-

"When the orders passed by the Juvenile Justice Board as well as the learned Sessions Judge are examined in the light of the provisions of Section 12 of the Act and the judgments mentioned above, it transpires that the Court, without there being any basis recorded the finding that the proviso to Section 12(1) of the Act can be invoked. The mere fact that some of the co-accused are yet to be apprehended is not a ground for denial of a bail to a child in conflict with law. Still further, gravity of the offence also is not a consideration which will prevail with the Court while deciding his application under Section 12 of the Act. The impugned orders, therefore, cannot be sustained and deserve to be set aside."

4. Perusal of the original order dated 06.11.2020, passed by the Ld. Principal Magistrate, Juvenile Justice Board, Gurugram, rejecting the petitioner's bail application goes to show that the Board (in Para No.8 of its order) was of the opinion that if released on bail, the petitioner may have to face revulsion and outrage from members of the society, who may look down upon him with suspicious eyes and he may be subjected to hostile and uncongenial behavior in the locality, which was, therefore, likely to expose him to physical and psychological danger.

5. In the opinion of this Court, such observation of the Ld. Juvenile Justice Board, Gurugram, was based on conjectures and surmises. The Board appears to have ignored the fact that the petitioner is originally a resident of Bara Banki, U.P., and presently was residing with his father Raghavram in Village Rajokari, South Avenue, New Delhi, which falls in a different State from where the trial is taking place, i.e. Gurugram in Haryana. In such circumstances, there was hardly any likelihood of the petitioner being identified as a culprit in a pending trial in a different State, which could have had the effect of exposing him to any revulsion and outrage from the local persons of his area.

6. Ld. Additional Sessions Judge, (Fast Track Court), Gurugram, in her impugned order dated 13.11.2020 upheld the decision of the Ld. Principal Magistrate, Juvenile Justice Board, Gurugram, by observing *inter alia*:-

"Under these circumstances, the appellant to my mind requires to be detained in protection home for reformation and counseling. Releasing

him on bail at this stage would associate him with known criminals and it would expose him to moral, physical or psychological danger and as such, learned Magistrate has rightly dismissed the application for bail. Order under challenge is perfectly legal and justified and does not call for any interference."

7. It would, therefore, appear that the impugned order was passed by the Ld. Lower Appellate Court without even considering the reasons for denying bail to the petitioner by the Magistrate, as already taken note of in preceding Para No. 4. On the other hand, Ld. Appellate Court was of the view that releasing the petitioner would associate him with known criminals and would also expose him to moral, physical and psychological danger as such, whereas the Ld. Juvenile Justice Board, Gurugram, had never speculated upon the possibility of the petitioner being exposed to any known criminals, in its own order.

8. In view of the above circumstances, this Court is of the opinion that the petitioner, who is a juvenile and has already remained in detention for a period of one year, one month and twenty days by now, should be released on bail. Consequently, the present revision petition is allowed after setting aside both the orders passed by the two Fora below, and the petitioner is directed to be released on bail to the satisfaction of the Ld. Principal Magistrate, Juvenile Justice Board, Gurugram/Duty Magistrate of the concerned area. It is, however, open for the State Authorities to seek cancellation of the petitioner's bail, in case they are able to bring any cogent material to the notice of the Juvenile Justice Board, Gurugram, that the petitioner, while on bail, is found to be in company of any known criminals or undesirable persons, which could adversely expose him to any moral, physical or psychological danger.

Petition allowed.
