

Law Today Live Doc. Id. 15666

PUNJAB AND HARYANA HIGH COURT

Before: Sudip Ahluwalia, J.

CRR-1196-2020

Decided on: 27.11.2020

Nandan

Petitioner

Versus

State of U.T., Chandigarh

Respondent

Present:

Mr. Salil Dev Singh Bali, Advocate, for the petitioner.

Mr. Gautam Dutt, Additional Public Prosecutor, for U.T., Chandigarh.

Protection of Children from Sexual Offences Act, 2012 (32 of 2012), Sections 4, 6 – Indian Penal Code, 1860 (45 of 1860), Sections 376(2)(f), 376(3) – Juvenile Justice (Care and Protection of Children) Act, 2015 (2 of 2016), Section 12 -- Rape with minor cousin sister – Prosecutrix was residing in house of petitioner being brought up by his mother -- Juvenile's bail – Prosecutrix entire statement recorded – Petitioner was aged about 15 years when the FIR was lodged still continues to be a juvenile -- By now, he has already remained in Safe Custody for more than one year and one and a half months – His further detention there would not appear to be in his overall interest due to the fact that there are likely to be more juveniles in conflict with law, housed in the same premises -- Prosecutrix has already been shifted from the parental house of the petitioner -- No reason to deny petitioner the opportunity of coming back to the custody of his parents -- Trial is likely to take its own substantial time, particularly on account of the ongoing Covid-19 pandemic -- Revision petition allowed -- Petitioner is directed to be released on bail.

(Para 4-8)

SUDIP AHLUWALIA, J. (ORAL) –

The present revision petition is directed against the order dated 07.09.2020 passed by the Ld. Additional Sessions Judge, Fast Track Special Court, Chandigarh, vide which the appeal preferred by the petitioner against the earlier order of dismissal of his bail application by the Juvenile Justice Board, Chandigarh, dated 06.04.2020, was dismissed.

2. Background of the matter is that the petitioner was named as the culprit in the original FIR No.0257 dated 11.10.2019, under Sections 4 and 6 of the POCSO Act and Sections 376(2)(f) and 376(3) of the Indian Penal Code, registered at Police Station Sector-31, Chandigarh (Annexure P-1), after which he was taken into custody. Being a juvenile, the case was taken up by the Juvenile Justice Board for trial and his application for bail preferred before the Board was dismissed with the following observations:-

“From the scrutiny of file, it is clear that as per allegations, victim is the cousin sister of the juvenile, who was residing in the same house where the juvenile was residing and even she gave birth to the child

alleged to have been born out of the loins of the juvenile. CFSL report in this respect is already on record. So, considering the facts as referred above and the proximity of relationship between the juvenile and the victim, we are of the view that there would be unsafety of the juvenile at the outside society, if he would be released on bail and moreover the ends of justice would be defeated, if the concession of bail will be granted to him in this case.

In the order dated 03.04.2020 passed in SUO MOTO WRIT PETITION (CIVIL) NO.4 OF 2020 as referred above, Hon'ble Apex Court has specifically directed that the children in conflict with law under Observation will be released on bail, unless there are clear and valid reasons for the application of the Proviso to Section 12 of Juvenile Justice (Care and Protection of Children) Act, 2015. In the case in hand, apparently there are valid reasons as discussed above for the application of Proviso to Section 12 of Act. So, in these circumstances, we do not deem it appropriate to enlarge juvenile Nandan on bail in the case as to keep him under Observation would be in his best interest and for his health and safety."

3. The aforesaid judgment/order of the Juvenile Justice Board was impugned by the petitioner in appeal before the Ld. Fast Track Special Court, Chandigarh, which was dismissed and order of the Board was upheld by the Ld. Additional Sessions Judge, Fast Track Special Court, Chandigarh, vide its impugned judgment, dated 07.09.2020, with the following observations:-

"The appellant has been facing enquiry before the Ld. JJB for accusation U/s 376 (2), F, 376(3) of the IPC, 4, 6 of the POCSO Act. Main challan was submitted on 21.12.2019 and DNA report vide supplementary challan was filed on 05.03.2020 in Board. While denying the concession of bail vide its order dated 06.04.2020 the Ld. JJB, Chandigarh, after duly considering the provisions of Section 12 of Juvenile Justice (Care and Protection of Children) Act, 2015, has rightly observed that "From the scrutiny of file it is clear that as per allegations, victim is the cousin sister of the juvenile, who was residing in the same house where the juvenile was residing and even she gave birth to the child alleged to have been born out of the loins of the juvenile. CFSL report in this respect is already on record. So, considering the facts as referred above and the proximity of relationship between the juvenile and the victim, we are of the view that there would be unsafety of the juvenile at the outside society, if he would be released on bail and moreover the ends of justice would be defeated, if the concession of bail will be granted to him in this case".

The victim girl delivered child and as per DNA analysis the same has been matched with the DNA of appellant. The allegations are of very serious nature, which depicts girls are not safe even in their own house and are becoming victims of their own blood relations. In the considered opinion of this Court ends of justice would be defeated, if the concession of bail will be granted to him when the enquiry is going on against him.

Hence, this Court does not find any ground to interfere in the impugned orders. Hence the appeal is dismissed. Appeal file be consigned to the record room."

4. On perusal of both the aforesaid orders, passed by the Ld. Fora below, it becomes clear that the basic reason, on account of which bail prayer of the petitioner was declined, in spite of his being a Juvenile, was the close proximity of the parties inasmuch as the prosecutrix, who is the cousin sister of the petitioner was actually residing in his parental house and was being brought up by his mother, who otherwise happens to be her maternal aunt (*massi*), since she had no daughter of her own.

5. In this context, Ld. Counsel for the petitioner has submitted that at this stage, there is no question of the parties being in proximity, since by now the prosecutrix has already shifted from the parental house of the petitioner, after her custody was taken back by her parents from the Nari Niketan, and is now reported to be residing with her another aunt, namely Sunaina Devi. Ld. Counsel for the U.T., Chandigarh, on instructions from the concerned Police Officer(s), has conceded to this submission from the petitioner's side.

6. In this view of the matter, it is clear that there is no conceivable risk to the prosecutrix at this stage, since she no longer resides in the house of the petitioner's parents. Further, it also transpires that by now her entire statement before the Ld. Trial Court has already been recorded.

7. The petitioner, who was aged about 15 years when the FIR was lodged on 11.10.2019, therefore, still continues to be a juvenile. By now, he has already remained in Safe Custody for more than one year and one and a half months. His further detention there would not appear to be in his overall interest due to the fact that there are likely to be more juveniles in conflict with law, housed in the same premises. On the other hand, once the prosecutrix has already been shifted from the parental house of the petitioner, there appears to be no reason to deny him the opportunity of coming back to the custody of his parents.

8. For the aforesaid reasons, as also the fact that the trial is likely to take its own substantial time, particularly on account of the ongoing Covid-19 pandemic, the present revision petition is allowed, after setting aside the impugned orders, and the petitioner is directed to be released on bail to the satisfaction of the Ld. Juvenile Justice Board/Duty Magistrate, concerned.

Petition allowed.
