

(2021) 09 P&H CK 0021

In the Punjab And Haryana At Chandigarh

Case No : Criminal Revision No. 272 Of 2021 (O&M)

Chamkaur Singh @ Nikku

APPELLANT

Vs

State Of Punjab

RESPONDENT

Date of Decision : 08-09-2021

Acts Referred:

Indian Penal Code, 1860 — Section 377, 379B

Protection Of Children From Sexual Offences Act, 2012 — Section 3, 4

Juvenile Justice (Care And Protection Of Children) Act, 2015 — Section 12(1)

Citation : (2021) 09 P&H CK 0021

Hon'ble Judges : Meenakshi I. Mehta, J

Bench : Single Bench

Advocate : Nishan Singh Chahal, Samina Dhira

Final Decision : Dismissed

Judgement

Meenakshi I. Mehta, J

1. Feeling aggrieved by the order dated 13.11.2020 passed by the Principal Magistrate, Juvenile Justice Board, Faridkot, (for short "the JJB") rejecting the second bail application as moved by the revisionist- petitioner (for short "the petitioner") and also the judgment dated 10.12.2020 (corrected on 25.02.2021) rendered by Additional Sessions Judge, Faridkot, dismissing the Criminal Appeal filed by him against the said order, the petitioner has moved this revision petition.

2. The facts culminating in the filing of the present revision petition, are that a criminal case was registered against the petitioner vide FIR No.152 dated 12.09.2020 at Police Station Jaitu, District Faridkot, under Section 377 IPC and Sections 3 and 4 of the Protection of Children from Sexual Offences Act, 2012, with the allegations of his having subjected the victim, aged 11 years, to unnatural sex. The petitioner moved a bail application before the JJB which was dismissed vide the order dated 25.09.2020 (Annexure P-2). The appeal, filed by him (petitioner) against the said order, was also dismissed by the Additional Sessions Judge, Faridkot, vide the order dated 5. 11.2020 (Annexure P-3).

Thereafter, he filed second application before the JJB for seeking the relief of bail and the same was again rejected vide the impugned order dated 13.11.2020 and the appeal preferred by him to assail the said order has also been dismissed vide the impugned judgment dated 10.12.2020.

3. I have heard learned counsel for the petitioner as well as learned State counsel in this revision petition and have also perused the file thoroughly.

4. Learned counsel for the petitioner has contended that while passing the impugned order as well as the judgment, both the Courts below have not properly appreciated the provisions, as contained in Section 12(1) of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short, "the Act of 2015") and have not recorded any specific findings as to how the case of the petitioner falls under the exception/proviso as provided therein and therefore, the impugned order and the judgment are not legally sustainable and are liable to be set aside and thus, the petitioner, who is in custody since 17.09.2020, deserves the relief of regular bail. To buttress his contentions, he has relied upon the observations made by the Co-ordinate Bench in "CRR No.53 of 2021 titled as Petitioner (name not mentioned) vs. State of Punjab decided on 08.02.2021".

5. Per contra, learned State counsel has argued that the victim in this case is a boy who was in tender years of age, i.e 11 years old, at the time of the commission of the offence whereas the petitioner, himself, was more than 16 years old at that time and was, thus, capable of understanding the nature of the act committed by him as well as the consequences thereof, very well and even otherwise, his elder brother is also involved in a criminal case registered under Section 379-B IPC and his mother has already expired and his father is a truck driver who remains out of the home for long spells and in such circumstances, the case of the petitioner clearly falls within the four corners of the proviso appended to Section 12(1) of the Act of 2015.

6. Section 12(1) of the Act of 2015 which pertains to the grant of bail to the juvenile/child provides as under:-

"12(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 (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 a decision.

....."

Learned counsel for the petitioner has forwarded the birth- certificate of the petitioner to this Court through "WhatsApp Group for Video Conferencing" wherein his (petitioner's) date of birth is recorded as 30.06.2004. The subject FIR was registered on 12.09.2020 and the alleged occurrence is stated to have taken place on 11.09.2020. Thus, it is explicit that at the time of the alleged commission of the offence, the petitioner was more than 16 years old.

7. It has categorically been mentioned in para 4 of the preliminary submissions in the Reply filed on behalf of the respondent- State, by way of the affidavit of Deputy Superintendent of Police, Sub- Division Jaitu, District Faridkot that the elder brother of the petitioner is involved in a criminal case registered under Section 379-B IPC at Police Station Jaitu and it has also been deposed in para 4 (reply on merits) therein that his (petitioner's) mother had passed away a few years ago and his father is a truck driver and usually remains away from home and the petitioner is not pursuing further studies and is almost a neglected child. These facts also find mention in the Social Investigation Report filed on behalf of the respondent-State.

8. In view of the above-discussed facts and circumstances, the observations made by the JJB and the appellate Court in the impugned order and the judgment respectively to the effect that the release of the petitioner on bail would defeat the ends of justice and that the probability of there being a likelihood of his being associated with any known criminal could not be ruled out, are perfectly logical and justified and in view thereof, it becomes quite clear that the case of the petitioner is squarely covered under the afore-mentioned exceptions/proviso as appended to Section 12(1) of the Act of 2015. The observations made by the Co-ordinate Bench in "CRR No.53 of 2021 (supra)" are of no avail to the petitioner as the facts and circumstances of the same are distinguishable from those of the present one.

9. As a sequel to the fore-going discussion, it follows that there is no illegality, infirmity or irregularity in the impugned order as well as the judgment passed by the Principal Magistrate, JJB and the Additional Sessions Judge, Faridkot respectively, so as to warrant any interference by this Court and it being so, the petitioner does not deserve the relief of bail. Resultantly, the instant revision petition, being sans any merit, is hereby dismissed.

10. However, keeping in view the fact that the petitioner is in custody since 17.09.2020, the Juvenile Justice Board, Faridkot, is hereby directed to expedite the trial of the case pending before it against him (petitioner) and decide the same preferably within a period of four months from the date of receipt of the copy of this order.