
(2004) 09 P&H CK 0059
In the Punjab And Haryana At Chandigarh
Case No : Criminal Revision No. 1110 of 2004

Sham Lal and anr.

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 08-09-2004

Acts Referred:

Citation : (2004) 4 RCR(Criminal) 368

Hon'ble Judges : Satish Kumar Mittal, J

Advocate : Mr. Jagat Singh, Advocate. Mr. Sunil K. Vashisht, AAG, Haryana.,
Advocates for appearing Parties

Judgement

Satish Kumar Mittal, J.

1. Petitioners Sham Lal alias Guggar and Rakesh alias Minto, who at the time of the alleged occurrence were 16 years and 14 years of age, have filed this criminal revision for their release on bail, being juveniles, in case FIR No. 40 dated 31.1.2004 under Section 376 (2G)/34 IPC, registered at Police Station Sadar Bhiwani.

2. The allegation against both the petitioners is that they have raped a minor girl, aged 15 years. Their bail application was rejected vide order dated 12.2.2004, passed by the Presiding Member/Officer, Juvenile Justice Board, Hisar, on the ground that the petitioners have committed rape upon a minor girl, which is a heinous crime and their release would defeat the ends of justice. This order was challenged in appeal by the petitioners under Section 52 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as the Act), which has been dismissed by Additional Sessions Judge, Hisar, vide order dated 24.4.2004, while observing as under :

"... There is doubt that both the accused/applicants are also juveniles and accordingly they are facing trial in Juvenile Justice Board, Hisar. However, thereby keeping in view that this is a gang rape and it accordingly shows that the accused/applicants had already come in contact of accused having a criminal

background. This accordingly shows that in this case, there is reasonable ground to believe that if the accused/applicants are released on bail, then there is likelihood to bring them in association with the criminals or expose them to moral danger and also that their release would defeat the ends of justice. Hence, the accused/applicants do not deserve to be released on bail. Accordingly, the bail application is dismissed."

Hence, the petitioners have filed the instant revision petition.

3. Counsel for the petitioners submitted that both the petitioners are admittedly juveniles. At the time of the alleged occurrence, they were 16 and 14 years of age. He further submitted that under the Act, granting of bail to a juvenile is mandatory and the same can be denied only if it appears that his release is likely to bring him in association with any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice. Counsel for the petitioners submitted that while considering the case of bail of a juvenile, the Court should not sway with the nature of the offence and the bail should not be denied on the ground of gravity of the offence. In support of his contention, counsel for the petitioners has relied upon a decision of the Allahabad High Court in *Vijendra Kumar Mali v. State of U.P.*, 2003(4) RCR(CrL.) 812 (Allahabad) and a decision of this Court in *Manmohan Singh v. State of Punjab*, 2004(2) RCR(CrL.) 89 (P&H). He further submitted that in this case, it is not the finding of the Courts below that release of the petitioners is likely to bring them in association with any known criminal or expose them to moral, physical or psychological danger. The bail to them has been declined on the ground that it would defeat the ends of justice.

4. Per contra, counsel for the respondentState submitted that in this case, petitioners, though are juveniles, but should not be granted bail, as they have committed a heinous crime of gang rape.

5. After hearing counsel for the parties, I am of the opinion that the Courts below have declined bail to the petitioners on unsustainable ground. Though, bail can be declined on the ground that it will defeat the ends of justice, but in the facts and circumstances of the case and particularly keeping in view the age of the petitioners, in my view denial of bail to them on the aforesaid ground is not just and reasonable.

Bail to the satisfaction of Principal Magistrate, Juvenile Board, Hisar.