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**(2016) 02 P&H CK 0330**

**In the Punjab And Haryana At Chandigarh**

**Case No :** Criminal Revision No. 424 of 2016 (O&M).

Vijay Kumar @ Chhotu (minor) through his mother

APPELLANT

Vs

State of Punjab

RESPONDENT

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**Date of Decision :** 29-02-2016

**Acts Referred:**

Juvenile Justice (Care and Protection of Children) Act, 2000 — Section 12

Penal Code, 1860 (IPC) — Section 366, 376

Protection of Children from Sexual Offences Act, 2012 — Section 4

**Citation :** (2016) 2 LawHerald 1415 : (2016) 5 RCRCriminal 897

**Hon'ble Judges :** Daya Chaudhary, J.

**Bench :** Single Bench

**Advocate :** P.S. Sekhon, Advocate, for the Appellant; Ritu Punj, Addl. A.G., Punjab, for the Respondent

**Final Decision :** Allowed

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## Judgement

Daya Chaudhary, J. - The present revision petition has been filed to challenge the impugned order dated 08.10.2015 passed by the Principal Magistrate, Juvenile Justice Board, Sangrur as well as order dated 17.11.2015 passed by the Additional Sessions Judge, Sangrur, whereby, the prayer of the petitioner for grant of bail has been declined.

2. Briefly, the facts of the case as made out in the present revision petition are that FIR No. 127 dated 17.09.2015 was registered under Sections 363, 366-A and 376 of Indian Penal Code and Section 4 of the Protection of Children from Sexual Offences Act, 2012 at Police Station City Dirbha, District Sangrur on the basis of complaint made by complainant-Jagsir Singh wherein it was alleged that his sister-Jaswinder Kaur was having two children. After the death of his sister, her daughter, who was 16 years of age and a student of 10th class, started residing with him. On 16.09.2015, his neighbour Sukhpal Singh told that at about 9 a.m., accused-Vijay Kumar @ Chhotu came on motorcycle and took away his niece by giving allurements of marriage. The girl was found traced and

she was sent with her uncle and the boy was sent to Observation Home by the Police. The Accused-petitioner being minor on the date of occurrence faced trial before the Juvenile Justice Board, Sangrur. An application was moved by the petitioner for releasing him on bail, which was dismissed by the Additional Chief Judicial Magistrate, Sangrur on 08.10.2015 on the ground that there is every possibility that in case, he is released on bail, then he may be exposed to moral or psychological danger by considering the gravity of the offence. Said order dated 08.10.2015 was challenged before the Additional Sessions Judge, Sangrur by way of filing an appeal, which was also dismissed vide order dated 17.11.2015.

3. Learned counsel for the petitioner submits that the petitioner was about 15 years old at the time of alleged occurrence and the victim was also less than 16 years of age. He is the first offender and is not involved in any criminal case. Even an undertaking has been given by the mother of the petitioner that she will look after the petitioner and he will not indulge in any criminal activity. Both the Courts below have not taken into consideration the fact as to how the petitioner will come in contact of known criminals or how he may be exposed to moral or psychological danger. Learned counsel also submits that it has been held in various judgments that ordinarily, the bail to juvenile in conflict with law should be granted in case, there is no possibility that he may expose to moral or psychological danger.

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

5. Heard the arguments of learned counsel for the parties and have also perused the impugned orders as well as the allegations levelled in the FIR.

6. In the present case, the age of the petitioner is not disputed and admittedly, he was juvenile at the time of alleged occurrence. Both the Courts below have not given any finding as to how the petitioner would come in contact of known criminals and expose him to moral, physical and psychological danger or how his release would defeat the ends of justice as neither the petitioner nor any of his family member is having any criminal background. No such evidence was even available with the Courts below, where, the application of the petitioner was dismissed.

7. Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as "the Act, 2000") reads as under :-

"12. Bail of juvenile.-

(1)When any person accused of a bailable or non-bailable offence, and apparently a juvenile, is arrested or detained or appears or is 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 1 [or placed under the

supervision of a Probation Officer or under the care of any fit institution of fit person] but he shall not be so released if there appear reasonable grounds for believing that the release is likely to bring him 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.

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

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

8. From the bare reading of the provisions of Section 12 of the 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 the same can be declined only in the case where reasonable grounds are there for believing that the release is likely to bring him into the association of any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice.

9. 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 Act is available.

10. Vide order dated 08.10.2015 passed by the Principal Magistrate, Juvenile Justice Board, Sangrur, the bail application of the petitioner has been declined on the ground that he may come in contact of known criminals but no material was available on record to show as to how he would come in contact of known criminals.

11. Similarly, the appeal filed against the said order has also been dismissed on the ground that the release of the petitioner would bring him in association with the known criminals or expose him to moral, physical or psychological danger.

12. In the present case, while declining the bail application, the relevant provision has not been considered by both the Courts below as in accordance with Section 12 of the Act, the juvenile is entitled to bail as a matter of right unless the case falls in the exceptions carved out in the provision itself but nothing was available on record to show that any of the three exceptions specified under Section 12(1) of the Act was existing.

13. Similar view was observed in cases *Manoj Singh v. 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.

14. 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. Petitioner is in custody since 20.09.2015 and no purpose will be served, in case, he is kept in custody.

15. In view of the totality of the facts and circumstances of the case and law position as discussed above, both the Courts below have not satisfied the requirement of provisions of Section 12(1) of the Act and without having any material on record, the bail application of the petitioner has been declined. The impugned orders are not sustainable in the eye of law and as such, are liable to be set aside.

16. Accordingly, the present revision petition is allowed and the impugned orders i.e., order dated 08.10.2015 passed by the Principal Magistrate, Juvenile Justice Board, Sangrur and order dated 17.11.2015 passed by the Additional Sessions Judge, Sangrur are hereby set aside. The petitioner is directed to be released on bail subject to his furnishing adequate bail bond/surety bonds through his natural guardian or near relative to the satisfaction of the Principal Magistrate, Juvenile Justice Board, Sangrur.