

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CRR-992- 2020

Date of Decision : July 13, 2020

Ashish Masih @ Ashu

..... PETITIONER(S)

VERSUS

State of Punjab

.... RESPONDENT(S)

CORAM : HON'BLE MR. JUSTICE SANJAY KUMAR

Present: Mr. Harpal Singh, Advocate, for the petitioner.
Mr. S.P.S. Tinna, Additional Advocate General, Punjab.

Sanjay Kumar, J.

The petitioner, a minor aged 17 years, is represented by his father. He filed this revision assailing the order dated 18.03.2020 of the learned Principal Magistrate, Juvenile Justice Board, Gurdaspur, whereby the bail application filed by him in CIS No. BA/151/2020 was dismissed.

The petitioner was one of the two accused in FIR No.86 dated 30.08.2019 on the file of Police Station, Dera Baba Nanak, District Batala, registered under Sections 363, 366, 376, 506, 34 and 120-B IPC along with Sections 4 and 6 of the POCSO Act, 2012. According to the prosecution, on 21.08.2019, the petitioner and the co-accused, Resham Singh @ Reshu, covered their faces with handkerchiefs and abducted the victim-girl. The petitioner was alleged to have stood guard while the co-accused raped the

victim-girl. The petitioner was arrested on 30.08.2019 and remained confined in the Special Home at Gurdaspur since then. He applied for grant of regular bail before the Juvenile Justice Board, Gurdaspur, and suffered the dismissal order dated 18.03.2020, presently under revision.

Significantly, Resham Singh, the co-accused of the petitioner, who allegedly committed the actual offence, stood trial in Sessions Case No. SC/270/2019 on the file of the learned Additional Sessions Judge, Gurdaspur, and by judgment dated 03.03.2020, he was acquitted of all charges on the ground that the prosecution had failed to discharge the requisite onus beyond reasonable doubt.

This fact was specifically raised by the petitioner before the Juvenile Justice Board, as is evident from the reference to the same in page-2 of the order. However, it is utmost surprising to note that after referring to the acquittal of the co-accused thus, the learned Principal Magistrate, Juvenile Justice Board, Gurdaspur, opined that the petitioner had remained present at the spot while the heinous offence of rape was committed by the co-accused! To add insult to injury, the concluding part of the order states to the effect that the evidence of the prosecutrix was yet to be recorded in the case!! If the learned Principal Magistrate was made aware of the fact that the co-accused had already been acquitted, as recorded by him in page-2 of the order, he could not have made these mistakes in the concluding paragraph. These errors also demonstrate the level of application of mind by the learned Principal Magistrate. These contradictions in the order speak for themselves and the inevitable inference that needs to be drawn from them reflects very poorly upon the judicial officer concerned. Shocking to note, the learned Principal Magistrate did not even refer to the extant enactment *viz.* The

Juvenile Justice (Care and Protection of Children) Act, 2015, but mentioned the Juvenile Justice Act, 2000, which stood repealed thereby.

The very constitution of a Juvenile Justice Board, headed by a Metropolitan Magistrate with at least three years experience, is with the intention that such an experienced judicial officer, assisted by two social workers, would be conscious of their pious duty to ensure protection of the rights of juveniles. The powers, functions and responsibilities of the Board, prescribed under Section 8 of the Act of 2015, and the tone and tenor of Section 12 thereof, which deals with grant of bail to a child in conflict with the law, manifest in no uncertain terms the duty cast upon the Juvenile Justice Board to implement the letter of the law in true spirit, keeping in mind the ultimate interests of the child. Section 12 of the Act of 2015 makes it clear that grant of bail to the child in conflict with the law should be the norm and the *proviso* thereto requires denial of such bail only if release of the child is likely to bring him or her into association with known criminals or expose him/her to moral, physical or psychological danger or defeat the ends of justice.

In the case on hand, the learned Principal Magistrate, Juvenile Justice Board, Gurdaspur, lackadaisically recorded that there were reasonable grounds to believe that if the petitioner was released on bail, it was likely to bring him into association with a known criminal or expose him to moral, physical or psychological danger. The learned Principal Magistrate further recorded that his release would defeat the ends of justice. This mechanical reproduction of the legal provision was mere lip service by the learned Principal Magistrate to the legal requirement but is of no avail, given the fact that he, having referred to the acquittal of Resham Singh,

CRR-992- 2020

4

contradicted himself thereafter by saying that the evidence of the prosecutrix was yet to be recorded.

This is not the level of care or the approach expected of a Magistrate heading a Juvenile Justice Board. The very purpose of constituting such Boards would be defeated by such uncaring and inept discharge of functions by judicial officers entrusted with the duty of giving effect to this welfare legislation.

The revision is accordingly allowed setting aside the order dated 18.03.2020 passed by the learned Principal Magistrate, Juvenile Justice Board, Gurdaspur. The petitioner is directed to be released on bail forthwith without sureties.

Copy of this order shall be placed before the learned Administrative Judge of Gurdaspur District for taking necessary remedial action, as deemed fit, for improving the standard of functioning of the Principal Magistrate concerned.

July 13, 2020
Kang

(Sanjay Kumar)
Judge

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No