

Banty vs State Of Haryana on 22 April, 2021

Author: Avneesh Jhingan

Bench: Avneesh Jhingan

CRM-M-9741-2021 (O&M)

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224 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-9741-2021 (O&M)
DECIDED ON: 22nd APRIL, 2021

BANTY

.....PETITIONER

VERSUS

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN.

Present: Mr. Jitendra Singh Sirohi, Advocate for the petitioner.

Mr. Deepak Bhardwaj, DAG, Haryana.

AVNEESH JHINGAN, J (ORAL)

The matter is taken up for hearing through video conference due to COVID-19 situation.

This petition is filed under Section 439 Cr.P.C for grant of regular bail in FIR No. 872, dated 3rd November, 2018, under Sections 363, 365 and 366-A of the Indian Penal Code, 1860 registered at Police Station City Sonapat, District Sonapat.

The FIR was registered at the behest of Om Pal Singh. It was stated that he was having three daughters. On 1st November, 2018 one of his daughter (hereinafter referred to as 'victim') went to market to purchase household items but never came back. It was alleged that his daughter was kidnapped.

On 9th January, 2021 the petitioner was arrested. He had solemnized marriage with the victim on 17th April, 2019 and she delivered a baby on 29th September, 2020. As per the school record the date of birth 1 of 6 CRM-M-9741-2021 (O&M) - 2- of the victim is 3rd January, 2004.

Learned counsel for the petitioner submits that the victim and the petitioner are married. They were blessed with a child and are living happily, hence the petitioner should be granted bail.

Learned State counsel opposes the prayer for grant of bail.

Submissions are that the victim was about 15 years of age when the marriage took place and the birth of the child is an indicator of physical relationship being made with the minor.

Learned counsel for the petitioner relies upon the family register for the determination of the age of the victim. He is not in a position to dispute the fact that as per the school record the victim was of about 15 years of age when the marriage was solemnized.

The Supreme Court in "Jarnail Singh vs. State of Haryana"

Criminal Appeal No. 1209 of 2010, decided on 1st July, 2013" has dealt with the issue with regard to determination of the age of the minor victim. It was held that Rule 12 of Juvenile Justice (Care and Protection of Children) Rules, 2007 though is applicable for determining the age of a child in conflict with law, the said provision is to be made basis for determining the age of the child who is a victim of crime. The relevant portion is quoted below:-

"20. On the issue of determination of age of a minor, one only needs to make a reference to Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 (hereinafter referred to as the 2007 Rules). The aforesaid 2007 Rules have been framed under Section 68(1) of the Juvenile Justice (Care and Protection of Children) Act, 2000. Rule 12 referred to hereinabove reads as under :

"12. Procedure to be followed in determination of Age.

2 of 6 CRM-M-9741-2021 (O&M) - 3- (1) In every case concerning a child or a juvenile in conflict with law, the court or the Board or as the case may be the Committee referred to in rule 19 of these rules shall determine the age of such juvenile or child or a juvenile in conflict with law within a period of thirty days from the date of making of the application for that purpose.

(2) The court or the Board or as the case may be the Committee shall decide the juvenility or otherwise of the juvenile or the child or as the case may be the juvenile in conflict with law, prima facie on the basis of physical appearance or documents, if available, and send him to the observation home or in jail.

(3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining -

(a) (i) the matriculation or equivalent certificates, if available; and in the absence whereof;

(ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;

(iii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age 3 of 6 CRM-M-9741-2021 (O&M) - 4- on lower side within the margin of one year.

and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a)(i), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.

(4) If the age of a juvenile or child or the juvenile in conflict with law is found to be below 18 years on the date of offence, on the basis of any of the conclusive proof specified in sub-rule (3), the court or the Board or as the case may be the Committee shall in writing pass an order stating the age and declaring the status of juvenility or otherwise, for the purpose of the Act and these rules and a copy of the order shall be given to such juvenile or the person concerned.

(5) Save and except where, further inquiry or otherwise is required, inter alia, in terms of section 7A, section 64 of the Act and these rules, no further inquiry shall be conducted by the court or the Board after examining and obtaining the certificate or any other documentary proof referred to in sub-rule (3) of this rule.

(6) The provisions contained in this rule shall also apply to those disposed off cases, where the status of juvenility has not been determined in accordance with the provisions contained in sub-rule(3) and the Act, requiring dispensation of the sentence under the Act for passing appropriate order in the interest of the juvenile in conflict with law."

Even though Rule 12 is strictly applicable only to determine the age of a child in conflict with law, we are of the view that the aforesaid statutory provision should be the basis for determining age, even for a child who is a victim of crime. For, in our view, there is hardly any difference in so far as the

issue of minority is concerned, between a child in conflict with law, and a child who is a victim of crime. Therefore, in our considered opinion, it would be just and appropriate to apply Rule 12 of the 2007 Rules, to determine the age of the prosecutrix VW-PW6. The manner of determining age conclusively, has been expressed in sub-rule (3) of Rule 12 extracted above. Under the aforesaid provision, the age of a child is ascertained, by adopting the first available basis, out of a number of options postulated in Rule 12(3). If, in the scheme of options under Rule 12(3), an option is expressed in a preceding clause, it has overriding effect over an option expressed in a subsequent clause. The highest rated option available, would conclusively determine the age of a minor. In the scheme of Rule 12(3), matriculation (or equivalent) certificate of the concerned child, is the highest rated option. In case, the said certificate is available, no other evidence can be relied upon. Only in the absence of the said certificate, Rule 12(3), envisages consideration of the date of birth entered, in the school first attended by the child. In case such an entry of date of birth is available, the date of birth depicted therein is liable to be treated as final and conclusive, and no other material is to be relied upon. Only in the absence of such entry, Rule 12(3) postulates reliance on a birth certificate issued by a corporation or a municipal authority or a panchayat. Yet again, if such a certificate is available, then no other material whatsoever is to be taken into consideration, for determining the age of the child concerned, as the said certificate would conclusively determine the age of the child. It is only in the absence of any of the aforesaid, that Rule 12(3) postulates the determination of age of the concerned child, on 5 of 6 CRM-M-9741-2021 (O&M) - 6- the basis of medical opinion."

The age is to be determined by seeking evidence by way of date of birth certificate from school or matriculation or equivalent certificate and in the absence of these certificates, the birth certificate issued by the Corporation or the Municipal Authorities or Panchayat.

In the present case, as per the school record the date of birth of the victim is 3rd January, 2004.

Without commenting upon the merits of the case and considering that the victim was of 15 years of age at the time of marriage and delivered a child at the age of 16 years, the bail is denied. There is another aspect to be noticed that the victim in this case is yet to be examined and the petitioner would be in a position to have influence on the witnesses.

No case is made out for the grant of bail.

Dismissed.

(AVNEESH JHINGAN)

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22 APRIL, 2021
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JUDGE

Whether speaking/reasoned	Yes
Whether reportable	Yes

