

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-2996-2024
Reserved on: 07.11.2024
Pronounced on: 20.11.2024

Krish @ Panipatiya ...Petitioner

Versus

State of Haryana ...Respondent

CRR-1717-2024

Romi @ Gunga ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Ajay Ghangas, Advocate,
for the appellant in CRA-S-2996-2024.

Mr. N.K. Chhokar, Advocate,
for the petitioner in CRR-1717-2024.

Mr. Aashish Bishnoi, DAG, Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
843	02.10.2022	Samalkha, Panipat	148, 149, 302, 506, 34, 120-B IPC and 25/54/59 of Arms Act

1. The present appeal/petition have been filed against the order of Judicial Magistrate, whereby their bail application stand dismissed and the said order affirmed vide order dated 05.08.2024 by the Additional Sessions Judge, Panipat, the appellant/petitioner have come up before this Court in appeal/revision.
2. In paragraph 13 of the appeal/petition, the accused declare that they have no criminal antecedents.
3. Since, both the matters are related to same FIR and role of both the appellant/petitioner is same so for brevity, the facts and allegations are being taken from

the reply filed by the State in CRA-S-2996-2024, which reads as follows:

"2.(i) That on 02.10.2022, ruqa was received from Government Hospital, Samalkha that Manoj S/o Ajit has been brought dead in the Hospital. On receiving ruqa, police party reached at Government Hospital, Samalkha where Bijender S/o Deep Chand (uncle of deceased) presented a written complaint. The contents of the complaint are as follows:-

"To, S.H.O, P.S. Samalkha. Respected Sir, 1, Bijender S/o Deep Chand and I am resident of Kuhar Pana, Samalkha. I am an agriculturist. On 01.10.2022 in the afternoon my nephew, Manoj S/o Ajit R/o Kuhar Pana told me that on 30.09.2022, during 'Ramlila', Himanshu S/o Rakesh, Sahil and Rustam etc. abused me and that on 01.10.2022 me and my nephew Sagar s/o Karambir, both of us after watching 'Ramlila' were going to our house through Bhadbhuja Gali. After going a long distance in the Gali at about 10:30 P.M, some persons were beating my nephew Manoj S/o Ajit. When I and Sagar raised our voices, Himanshu @ Ishu s/o Rakesh stabbed Manoj on his sides and waist with a knife which was in his hand, then Sahil s/o Randhir stabbed Manoj with a knife on his waist, then Romi struck Manoj on his hands with knife and then Rustam @Chota struck Manoj with a Ice Pick (Sua) and even others beat Manoj. That Sagar and I tried to catch them but everyone fled with their weapons who threatened that whoever comes in between will be murdered. Sagar and I took Manoj on motorcycle and admitted him in the Govt. Hospital Samalkha where Doctor declared Manoj as brought dead. Himanshu@ Ishu, Sahil s/o Randhir, Romi grandson of Randhir, Rustam @ Chota (s/o maternal uncle of Ishu) and some other residents of Balmiki Basti, Samalkha have murdered Manoj and that strict action should be taken, against them."

On the basis of said complaint and nature of crime, a formal FIR No. 843 dated 02.10.2022 under sections 302, 148, 149 and 506 of IPC (Section 120-B of IPC and Section 25 of Arms Act were added later on), was registered at P.S Samalkha, District Panipat."

4. The appellant/petitioner's counsel prays for bail further separation from parents and detention in protective care would cause an irreversible injustice to the appellant/petitioner and their family.

5. The State's counsel opposes bail and refers to the reply.

6. It would be appropriate to refer to the following portions of the reply filed in CRA-S-2996-2024, which read as follows:

“2. (v) That the following accused were found involved in crime and were arrested by the investigating officer during the investigation: -

Sr. No.	Name accused	Date of Arrest	Name come in this case	Role in the crime	Recovery
3.	Romi @ Gunga S/o Sunder Ram	05.10.2022	He is named in the FIR	He gave beatings to the deceased in conspiracy with other accused.	NIL
4.	Krish Panipatiya S/o Dharambir Singh (Petitioner)	05.10.2022	He was named in the statement dated 04.10.2023 of the complainant.	He stabbed knife in the chest of the deceased due to which deceased died on the spot.	Knife

7. It shall be appropriate to refer to the following provisions of the Juvenile Justice (Care and Protection Of Children) Act, 2015:

- S. 2(35) “juvenile” means a child below the age of eighteen years;
- S. 2(12) “child” means a person who has not completed eighteen years of age;
- S.2(13) “child in conflict with law” means a child who is alleged or found to have committed an offence and who has not completed eighteen years of age on the date of commission of such offence;
- S. 2(33) “heinous offences” includes the offences for which the minimum punishment under the Indian Penal Code (45 of 1860) or any other law for the time being in force is imprisonment for seven years or more;
- S. 12. Bail to a person who is apparently a child alleged to be in conflict with law.—(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.
- (2) When such person having been apprehended is not released on bail under sub-section (1) by the officer-in-charge of the police station, such officer shall cause the person to be kept only in an observation home 1[or a place of safety, as the case may be] in such manner as may be prescribed until the person can be brought before a Board.

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

(4) When a child in conflict with law is unable to fulfil the conditions of bail order within seven days of the bail order, such child shall be produced before the Board for modification of the conditions of bail.

S. 15. Preliminary assessment into heinous offences by Board.—(1) In case of a heinous offence alleged to have been committed by a child, who has completed or is above the age of sixteen years, the Board shall conduct a preliminary assessment with regard to his mental and physical capacity to commit such offence, ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence, and may pass an order in accordance with the provisions of sub-section (3) of section 18:

Provided that for such an assessment, the Board may take the assistance of experienced psychologists or psycho-social workers or other experts.

Explanation.—For the purposes of this section, it is clarified that preliminary assessment is not a trial, but is to assess the capacity of such child to commit and understand the consequences of the alleged offence.

(2) Where the Board is satisfied on preliminary assessment that the matter should be disposed of by the Board, then the Board shall follow the procedure, as far as may be, for trial in summons case under the Code of Criminal Procedure, 1973 (2 of 1974):

Provided that the order of the Board to dispose of the matter shall be appealable under sub-section (2) of section 101:

Provided further that the assessment under this section shall be completed within the period specified in section 14.

S. 18. Orders regarding child found to be in conflict with law.—(1) Where a Board is satisfied on inquiry that a child irrespective of age has committed a petty offence, or a serious offence, or a child below the age of sixteen years has committed a heinous offence, 1[or a child above the age of sixteen years has committed a heinous offence and the Board has, after preliminary assessment under Section 15, disposed of the matter] then, notwithstanding anything contrary contained in any other law for the time being in force, and based on the nature of offence, specific need for supervision or intervention, circumstances as brought out in the social investigation report and past conduct of the child, the Board may, if it so thinks fit,—

(a) allow the child to go home after advice or admonition by following appropriate inquiry and counselling to such child and to his parents or the guardian;

(b) direct the child to participate in group counselling and similar activities;

(c) order the child to perform community service under the supervision of an organisation or institution, or a specified person, persons or group of persons identified by the Board;

(d) order the child or parents or the guardian of the child to pay fine:

Provided that, in case the child is working, it may be ensured that the provisions of any labour law for the time being in force are not violated;

(e) direct the child to be released on probation of good conduct and placed under the care of any parent, guardian or fit person, on such parent, guardian or fit person executing a bond, with or without surety,

as the Board may require, for the good behaviour and child's well-being for any period not exceeding three years;

(f) direct the child to be released on probation of good conduct and placed under the care and supervision of any fit facility for ensuring the good behaviour and child's well-being for any period not exceeding three years;

(g) direct the child to be sent to a special home, for such period, not exceeding three years, as it thinks fit, for providing reformatory services including education, skill development, counselling, behaviour modification therapy, and psychiatric support during the period of stay in the special home:

Provided that if the conduct and behaviour of the child has been such that, it would not be in the child's interest, or in the interest of other children housed in a special home, the Board may send such child to the place of safety.

(2) If an order is passed under clauses (a) to (g) of sub-section (1), the Board may, in addition pass orders to—

(i) attend school; or

(ii) attend a vocational training centre; or

(iii) attend a therapeutic centre; or

(iv) prohibit the child from visiting, frequenting or appearing at a specified place; or

(v) undergo a de-addiction programme.

(3) Where the Board after preliminary assessment under section 15 pass an order that there is a need for trial of the said child as an adult, then the Board may order transfer of the trial of the case to the Children's Court having jurisdiction to try such offences.

8. It shall be appropriate to refer to the order of JMFC dated 27-02-2023, reads as follows:

"xxxx Similarly, applicant Krish examined AW2 Anju who proved original birth certificate showing his date of birth 14.09.2006 which is further confirmed by Investigating Officer vide report dated 30.11.2022. It is categoric version of prosecution that alleged occurrence was committed on 01.10.2022. However, applicants have submitted that they were juvenile on 01.10.2022, when alleged offence was committed. The prosecution has filed reports (supra) to the effect that actual date of birth of applicants was less than 18 years of age on the alleged date of occurrence. Hence, they fall in the definition of a juvenile in conflict with law, under Section 2 (l) of the Juvenile Justice (Care and Protection of Children) Act, 2000. Sequally, applicant Romi, Aaditya and Krish are hereby declared juvenile on the date of occurrence. Accordingly, they are directed to appear before learned Juvenile Justice Board, Panipat on 28.02.2023."

9. As per Section 12 of the Juvenile Justice Act, 2015, when any person who is

apparently a child and is alleged to have committed a bailable or non-bailable offense is apprehended or detained by the police or appears or brought before a Board, such person shall, notwithstanding anything contained in the CrPC, 1973/ BNSS, 2023 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 the care of any fit person. However, as per the proviso, such a person shall not be released if there appear to be 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. Given this, the following aspects have to be considered by the Juvenile board:

- 1) The release will likely bring the child into association with any known criminal.
- 2) Expose the child to moral, physical, or psychological danger.
- 3) The child's release would defeat the ends of justice.

10. While rejecting the bail, Ld. Additional Sessions Court relied upon the Social Investigation Report in the following terms:

"It has been contended on behalf of the State that if the applicant is released on bail, he is likely to commit any such similar offence in future. In the Social Investigation Report of the applicant, the living condition has been mentioned as poor. Further, the reason for alleged offence has been mentioned as 'parent's negative influence'. As such, it is clear that the applicant has been subjected to parental neglect and negative influence from them, the family of the applicant has failed to provide him good education. The majority friends of the applicant has been mentioned in the report as 'illiterate'. The applicant has studied up to 5th standard. In these circumstances, the interest of the applicant will be better served if the applicant is kept in protective custody. Moreover, if the applicant is released on bail, he may suffer some injury/social trauma. As such the protective custody of the applicant is the interest and welfare of the applicant, which will at least give a good atmosphere to teach him for himself to become good citizen, and further it will also help him to improve his overall being."

11. Given the above, the reasons are not in terms of the statutory requirement of Section 12 of the JJ Act.

12. Undoubtedly, the most grievous injury has been attributed to the

appellant/petitioner, but they were under sixteen years of age at the time of the occurrence. Thus, he could have been separated from his lawful guardians only after meeting the statutory conditions of the JJ Act, which was prima facie not done.

13. Resultantly, the appellant/petitioner's custody be handed over to his parents subject to the condition that they shall be responsible for the appellant/petitioner's good behavior and shall ensure that the appellant/petitioner, who is a child in conflict with the law, does not repeat any offense. The appellant/petitioner will be released after his parents furnish a bond in these terms.

14. Consequently, the impugned order dated 05.08.2024 is set aside.

15. Any observation made hereinabove is neither an expression of opinion on the case's merits nor shall the trial Court advert to these comments.

16. There would be no need for a certified copy of this order for furnishing bonds, and any Advocate for the Petitioner can download this order along with case status from the official web page of this Court and attest it to be a true copy. If the attesting officer wants to verify the authenticity, such an officer can also verify its authenticity and may download and use the downloaded copy for attesting bonds.

Appeal/petition are allowed in aforesaid terms. All pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

20.11.2024

Jyoti-II

Whether speaking/reasoned: Yes

Whether reportable: No.