

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-1684-2024
Reserved on: 04.12.2024
Pronounced on: 19.12.2024

Sombir @ Chand @ David @ Govind minor through his mother ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Rakesh Kumar Lathwal, Advocate for the petitioner.

Mr. Aashish Bishnoi, D.A.G., Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
265	23.06.2020	Kharkhoda, Sonipat	302, 34 IPC (Section 201 IPC added lateron) and 25 Arms Act

1. The petitioner, incarcerated in the FIR captioned above and aggrieved by the dismissal of regular bails by the trial and appellate courts, came before this Court under Section 102 of Juvenile Justice (Care and Protection of Children) Act, 2015.
2. As per paragraph 4 of the grounds of appeal, the accused-petitioner is a minor child.
3. The facts and allegations are being taken from the status report dated 18.11.2024 filed by the State, which reads as follows:-

“2. That briefly stating the facts involved in the instant case are that on 23.06.2020, acting upon an information that dead body of an unknown person is lying in the fields in the area of village Barona, District Sonipat, police officials rushed to the spot, where dead body of a person smeared with blood was found lying and blood had oozed out of the chest and face of the deceased in huge quantity and inspection of the dead body revealed that deceased had been murdered by firearm injury. Efforts were made for ascertaining the identity of the deceased person at the spot, but his identity could not be known. Thereafter, family member of Sarpanch of the village Barona, District Sonipat, namely Bijender son of Ved Singh presented a complaint, stating therein that he is resident of village Barona

and wife of his younger brother namely Smt. Seema is the Sarpanch of village. On 23.06.2020, at about 06:00 O'clock, his co-villager namely Narshi son of Shri Hari Om informed him on his mobile phone No.97297xxxxx from his mobile phone No. 99920xxxxx that dead body of a youngster smeared with blood was lying in the field of Jagbir son of Suraj Bhan, upon which he telephonically informed SHO, Police Station Kharkhoda and reached the spot with other co-villagers, where dead body was found lying, which could not be identified and it appears that someone has murdered the deceased. He further stated that face of the dead body cannot be identified, as due to firearm injury blood has oozed out and has gathered at the face of deceased. He further stated that only sky colour underwear is on the dead body and there is no other cloth on the dead body and it seems that someone has murdered deceased due to enmity. With these allegations, the complainant sought for legal action against the culprits. On receipt of above information, instant FIR was registered and investigation was set into motion."

4. The petitioner's counsel prays for bail by imposing any stringent conditions and contends that further pre-trial incarceration would cause an irreversible injustice to the petitioner and his family.
5. The State's counsel opposes bail and refers to the status report.
6. It would be appropriate to refer to the following portions of the status report, which read as follows:

"11. That there are direct and specific allegations and sufficient evidence against petitioner to connect him with the commission of above mentioned offence. He is specifically named in the statement of father of deceased. Petitioner had actively participated in the above mentioned crime. Firstly, he alongwith co-accused hatched the conspiracy for committing the murder of Sushil @ Shila and thereafter, accused persons boarded deceased on motorcycle and took him to the fields, where he was shot dead by petitioner Sombir @ Chand by firing gunshots at him and when deceased Sushil @ Shila tried to run away, petitioner Sombir followed him and after covering a distance of about 1½ acre, Sushil @ Shila fell down and when Sushil was lying on the ground, petitioner Sombir again fired shots in his chest. Thereafter, petitioner Sombir with co-accused Amit took the clothes of deceased and fled away from the spot on

a Scooty. After use, the pistol used by petitioner in committing the crime was returned to co-accused Rupender Nanha and the Scooty used at the time of occurrence was also got recovered by him in another case at Gurugram. Petitioner had actively participated in the commission of above mentioned offence, which has also been admitted by him in his disclosure statement, pursuant to which, he also got demarcated the place of occurrence. The case qua petitioner is pending for arguments on charge and if enlarged on bail, petitioner can tamper with prosecution evidence and can also hamper the trial by absconding from the process of law. Merely on the basis of longevity of incarceration, petitioner is not entitled to seek the concession of bail as a matter of right. Petitioner has actively participated in the commission of above mentioned offence. Thus, keeping in view the seriousness of offence, facts and circumstances of the case, role of petitioner in committing the crime and punishment provided, he is not entitled to the relief of bail as claimed for.”

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. The relevant portion of the social investigation report is mentioned in the bail order passed by the Principal Magistrate, Juvenile Justice Board, Sonipat, which reads as follows:-

"6 xxxxx Preliminary Assessment of the applicant/CCL was conducted as envisaged under Section 15 of the Juvenile Justice (Care and Protection) Act, 2015 and vide order dated 28.02.2024 passed by this Board, it was held that there is a need for trial of the said CCL as an adult and hence, as per provision of Section 18(3) of the J.J. Act, the trial of the case was transferred to Learned Children's Court and at present, the case/trial is pending in the Court of Shri Ajay Prashar, Learned Additional Sessions Judge, Sonipat."

9. Given the social investigation report, there is no reason to deny the bail to the juvenile offender.

10. The petitioner is a first offender, apart from being a minor; thus, one of the relevant factors would be to provide an opportunity to course correct. Even a prima facie perusal of paragraph 6 of the appeal needs consideration for bail. Given the above, the Juvenile petitioner-in conflict with the law is ordered to be released on bail on furnishing bonds by the father of the petitioner with an undertaking to produce him on each and every date to the satisfaction of trial/Illaqa/Duty Magistrate.

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

12. 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.

Petition allowed. All pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

19.12.2024

Jyoti-II

Whether speaking/reasoned:	Yes
Whether reportable:	No