

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM No. M-17082 of 2015 (O&M)
Date of Decision: 27.5.2015

Harmanjit Singh

--Petitioner

Versus

State of Punjab

--Respondent

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Veneet Sharma, Advocate for the petitioner.

Mr. Nikhil K. Chopra, D.A.G., Punjab.

TEJINDER SINGH DHINDSA.J

The instant petition has been filed under Section 439 Cr.P.C read with Section 12 of the Juvenile Justice (Care & Protection of Children) Act, 2000 praying for grant of regular bail to the petitioner in case F.I.R. No.52 dated 15.4.2014 under Sections 302, 34 I.P.C registered at Police Station, Gate Hakima, Amritsar City, District Amritsar.

Learned counsel for the parties have been heard.

Deceased in the present case is Kuldeep Singh. As per prosecution version there were a total of 4 calls received on the mobile phone belonging to deceased from SIM No.99145-54403 and it came forth during investigation that such calls were made by co-accused Jaswinder Singh. It has gone uncontroverted that the present petitioner is sought to be implicated only on the basis of a confessional statement made by co-accused Jaswinder Singh.

Petitioner has been in custody since 17.4.2014.

Factual position as regards present petitioner being a juvenile is not disputed.

The bail application preferred by the petitioner has been declined vide order dated 9.1.2015, passed by learned Sessions Judge, Amritsar by observing that, if, the petitioner is released on bail, then, his life would be at danger at the hands of the complainant party as in these kind of cases there is every possibility on the part of the complainant party to take revenge upon the accused for murder of their kith and kin.

Having heard learned counsel for the parties at length, this Court is of the considered view that petitioner is entitled to the concession of bail.

Section 12 of the Juvenile Justice (Care & Protection of Children) 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 [for placed under the supervision of a Probation Officer or under the care of any fit institution or 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 incharge 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.”

Reading of the provision reproduced herein above would make it apparent that an exception has been carved out for declining bail to the juvenile, who is in conflict with law i.e. he or she is likely to come in association with any known criminal or upon release on bail would expose such juvenile to moral, physical or psychological danger or that release of the juvenile would defeat the ends of justice. Suffice it to observe that for invoking such exception there has to be some material before the competent court on the basis of which it can be held that the release of the juvenile would fall within the exception recognized under Section 12 of the Act. The impugned order dated 9.1.2015 passed by learned Sessions Judge, Amritsar is completely bereft of any such reasoning. No such material/evidence has been adverted to in the order.

Even otherwise, seriousness of the offence as mentioned in the F.I.R would not be a ground to deny to the juvenile the concession of bail in the light of Section 12 of the Act.

It would also be useful to refer to a judgement passed by a Coordinate Bench of this Court in case of **Atul Kumar and another Vs. State of Haryana, 2003(4) RCR (Criminal) 404**, wherein Section 12 of the Act was considered. Even in case of **Atul Kumar** (supra) the offence attributed to the juvenile was serious and sections 302, 323, 147 and 149 I.P.C had been cited and the Coordinate Bench held in the following terms:-

“I am further of the view that there has to be some evidence on record showing that after the release on bail, the petitioners are likely to come in association with any known criminal or their release on bail would expose them to moral,

physical or psychological danger or that their release would defeat the ends of justice. In a given case if the parents of the petitioners are also criminals either ex-convicts or members of a gang, it may be possible for the Court to refuse bail. Another example could be whether the petitioners have repeated the crime showing lapse on the part of the parents after their release while on bail, then the case may be covered by the exceptions carved out under Section 12 of the Act. However, in a case like the one in hand, where no material has been placed on record to show that the release of the 'juvenile in conflict with law' would defeat the ends of justice or any other exception, the petitioners cannot be denied the benefit of bail merely on the basis of conjectures or opinion formed by the prosecution or the Court. Reliance in this regard could be placed on the judgments in the case of Sahabuddin @ Shabboo's case (supra) and Sanjeev Kumar's case (supra)."

For the reasons cited above, the present petition is allowed.

Petitioner is held entitled to the grant of bail under Section 12 of the Act.

Accordingly, petitioner is directed to be enlarged on bail subject to furnishing bail bonds to the satisfaction of C.J.M., Amritsar.

Disposed of.

(TEJINDER SINGH DHINDSA)
JUDGE

27.05.2015
lucky