

**Sr. No. 226
IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CRM No. M-8831 of 2016 (O&M)

Date of Decision: 10.05.2016

Sachin Tomar

...Petitioner

Versus

State of Haryana

... Respondent

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

Present:- Ms. Savita Rana, Advocate,
for the petitioner.

Mr. Vivek Saini, DAG, Haryana.

TEJINDER SINGH DHINDSA. J (ORAL)

Present petition has been filed under Section 439 Cr.P.C. seeking benefit of regular bail to the petitioner pending trial in case FIR No.534 dated 30.09.2015, under Sections 460, 109 of Indian Penal Code, registered at Police Station Gharaunda, District Karnal.

FIR came to be registered at the instance of Manoj Kumar. Deceased is Om Parkash i.e. father of the complainant. Complainant had stated that on 29.09.2015 at about 7:00 p.m. one Jaibhagwan @ Babli who was a driver had parked their tractor and had handed over the keys to Om Parkash (since deceased) as per usual practice. It is stated that on the next day at about 6.30 a.m. he discovered the body of his father with blood oozing out from the mouth, nose, ear and head. The tractor was also found to be missing.

It was a blind FIR that had been got registered as no assailant had been named therein.

As per prosecution version, the present petitioner along with two others have been nominated as accused. Basis of the implication of the present petitioner is that he was found in possession of the tractor.

Petitioner was arrested on 30.09.2015.

The factual position as regards the present petitioner being a juvenile is not in dispute.

The bail application filed by the present petitioner stands dismissed vide order dated 23.02.2016 by the learned Additional Sessions Judge, Karnal and by adopting the following reasoning:-

“As per report from the act and conduct of the applicant-jvenile, the villagers are annoyed and it will not be in the interest of the juvenile be released on bail. In the given circumstances, distancing the applicant from the environment as prevalent in the family and friends' circle, would be for his betterment and welfare as this would help him in softening his attitude towards the society. Further more, in my considered opinion, release of the applicant in view of the nature of the allegations made against him and facts and circumstances of the case would also defeat the ends of justice”.

A perusal of the extract reproduced hereinabove would make it clear that it has weighed with the Court that the villagers are annoyed and as such it would not be in the interest of the juvenile to be released on bail. That apart, Court has observed that it would be for the betterment and welfare of the juvenile as also to aid in the softening of his attitude towards society that bail has been declined.

Even the nature of allegations and seriousness of the offence has

weighed with the Court.

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

Section 12 of the Juvenile Justice (Care and 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.”

A bare reading of the provision reproduced hereinabove would make it apparent that an exception has been carved out for declining bail to a 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.

For invoking such exception envisaged under Section 12 of the Act, 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 the provision. The impugned order dated 23.02.2016 passed by the learned Additional Sessions Judge, Karnal declining benefit of bail to the petitioner is completely bereft of any such reasoning. No such material/evidence has been adverted to by the Court on the strength of which an opinion has been formed that the petitioner if released on bail would be under possible physical or psychological danger.

Seriousness of the offences as mentioned in the FIR would not be a ground to deny to the juvenile the concession of bail in the light of Section 12 of the Act.

A coordinate Bench of this Court in ***Atul Kumar and another Vs. State of Haryana, 2003 (4) RCR (Criminal) 404*** considered the scope of ambit of operation of Section 12 of the Act. Even in the case of ***Atul Kumar (supra)*** offence attributed to the juvenile were serious and Sections 302/323/147/149 IPC 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 exconvicts 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 recorded above, the present petition is allowed.

The impugned order dated 23.02.2016, passed by learned Additional Sessions Judge, Karnal is set aside. Petitioner be enlarged on bail on furnishing bail bonds/surety bonds subject to the satisfaction of the trial Court.

Disposed of.

10.05.2016

**(TEJINDER SINGH DHINDSA)
JUDGE**