

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Criminal Revision No.3655 of 2015(O&M)

Decided on:-26.05.2016.

Rajiv KumarPetitioner(s)

Versus

State of PunjabRespondent(s)

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. Suvir Sidhu, Advocate for the petitioner(s).

Mr.Gurinderjit Singh, DAG, Punjab.

Mr.Raman Goklaney, Advocate for the complainant.

HARI PAL VERMA, J. (ORAL)

Petitioner, namely, Rajiv Kumar, has approached this Court by way of present revision petition assailing the order dated 08.06.2015 passed by learned Principal Magistrate Juvenile Justice Board, Patiala as well as the order dated 20.07.2015 passed by learned Addl. Sessions Judge, Patiala, whereby, the bail application of the petitioner was dismissed.

Learned counsel for the petitioner contends that earlier petitioner had approached this Court, by way of *Criminal Revision bearing No.426 of 2015*, seeking his release on bail, on the ground that he is a juvenile, but learned Courts below have declined the bail of the petitioner

on the ground that the offence levelled against him is heinous in nature. The said revision petition was disposed of by this Court, vide order dated 28.04.2015, observing as under:-

“The petitioner prays for his release on bail on the ground that he is a Juvenile. By virtue of the impugned order dated 2.12.2014 the learned Court below concluded that the petitioner is a Juvenile but declined the bail on the ground that the offence in which he is involved is under Section 302 IPC. His appeal against the said order was also dismissed vide order dated 19.12.2014.

On due consideration of the matter, I am of the view that the Court has ignored parameters prescribed in Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2000 which is extracted herebelow:-

12. Bail to 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 (or 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.”

Once the Court concludes that person is a Juvenile, his bail can be declined only on the grounds noticed above and not simply on the ground that the offence is heinous.

For the aforesaid reasons, impugned orders dated 2.12.2014 and 19.12.2014 are set aside and the matter is remanded back to Principal Magistrate, Juvenile Justice Board, Patiala for decision afresh.

Let needful be done as expeditiously as possible but not later than two weeks from the date of receipt of the certified copy of this order.”

Disposed of.

Learned counsel for the petitioner further contends that pursuant to the aforesaid order dated 28.04.2015 passed by this Court, the petitioner approached learned Court below, but the bail of the petitioner has been declined primarily on the ground that as per the allegations of the prosecution, when the deceased was returning to his house after stroll, the petitioner emerged from a corner where he had been hiding himself and stabbed the deceased. Since the petitioner committed the murder of the deceased after pre-meditation at the instance of his father, it would not be advisable to release the petitioner on bail. While declining the bail of the petitioner, learned Courts below have observed that the he has already left his studies and he did not do anything as on date and since the father of the petitioner had instigated him to commit the murder of the deceased, namely, Kuldip Singh Gir, it would not be advisable to release him on bail. Learned counsel for the petitioner also contends that the observations made by learned Court below run contrary to the provisions of the Act and

while referring to *Section 12 in The Juvenile Justice (Care and Protection of Children) Act, 2000*, contends that the case of the petitioner does not fall within the parameters which may disentitle him from bail. The petitioner is in custody since 07.08.2014 and there is no dispute about the juvenility, as the Juvenile Court is trying the matter.

On the other hand, learned counsel for the complainant has argued that there is no illegality in the order passed by learned Courts below. The offence committed by the petitioner squarely falls within the definition of heinous crime and in case, the petitioner is released on bail, he would certainly be associated with his father, who is the person at whose instigation or association the murder of deceased, namely, Kuldip Singh Gir was committed.

Similarly, learned counsel for the State also joined counsel for the complainant and has opposed the bail of the petitioner.

I have heard learned counsel for the parties and have gone through the case file.

Admittedly, the petitioner is in custody since 07.08.2014. There is no dispute about the juvenility of the petitioner. The only consideration which weighed in the mind of the Courts below is that the offence committed by the petitioner is heinous in nature and in case the petitioner is released on bail, he would certainly be associated with this father at whose instigation or association, he committed the murder. In my view, this is not a valid ground to decline the bail of the petitioner, particularly when the juvenility is not disputed either at this stage or at the

trial Court. Since the petitioner is in custody 07.08.2014, this Court finds that petitioner is entitled for the grant of bail.

Accordingly, the order dated 08.06.2015 passed by learned Principal Magistrate Juvenile Justice Board, Patiala, and the order dated 20.07.2015 passed by learned Addl. Sessions Judge, Patiala, are set aside and the petitioner is ordered to be released on bail subject to his furnishing bail bonds/surety bonds to the satisfaction of the trial Court.

However, it is made clear that this order may not be construed as an expression opinion on the merits of the case and the trial Court shall be at liberty to decide the case on the basis of availability of evidence.

May 26, 2016
Anjal

(HARI PAL VERMA)
JUDGE