

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

(1)

**Crl. Misc. No.M-34995 of 2017 (O&M)
Date of Decision: October 07, 2017.**

Francis Thomas

.....PETITIONER(s).

VERSUS

Central Bureau of Investigation

.....RESPONDENT(s).

(2)

Crl. Misc. No.M-35035 of 2017 (O&M)

Jayesh Thomas

.....PETITIONER(s).

VERSUS

State of Haryana and another

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Argued by: Mr. J.S. Bedi, Senior Advocate with
Mr. Lovekirat S. Chahal, Advocate
for the petitioner in CRM-M-34995-2017.

Ms. Isha Goyal, Advocate
for petitioner in CRM-M-35035-2017.

Mr. Deepak Sabharwal, Addl. A.G. Haryana.

Mr. Sumeet Goel, Advocate
retainer counsel for CBI with
Sub Inspector Abhimanyu-CBI.

Mr. Sushil K. Tekriwal, Advocate with
Mr. Anupam Singla and Mr. Ankit Aggarwal, Advocates
for the complainant.

SURINDER GUPTA, J.(Oral)

Both these petitions have been filed under Section 439 Code of

Criminal Procedure for grant of regular bail to the petitioners in case FIR

No.250 dated 08.09.2017 registered for the offences punishable under Sections 302 Indian Penal Code, 25 of Arms Act, 75 Juvenile Justice (Care and Protection of Children) Act, 2015 (for short-J.J.Act) and Section 12 of Protection of Children from Sexual Offences (POCSO) Act, 2012 (added later on) at Police Station Bhondsi.

Pradyumn Thakur aged 7 years was student of second class in Ryan International School, Bhondsi. He along with his sister Vidhi was left at school by their father (complainant) at 8.00 A.M. on 08.09.2017. At 8.10 A.M., he received a phone call of his wife, who asked the complainant to immediately call Anju Dudeja madam. When he contacted Anju Dudeja madam, she told him that his son had a cut on the neck and is profusely bleeding and was being taken to Badshahpur hospital, she asked him to reach there. Complainant along with his wife left for Badshahpur Hospital but on the way, he received a call from Anju Madam that they were taking the child to Artemis Hospital. When complainant reached there, the boy was in emergency ward and he found that there was a cut on the right side of neck upto the ear. The doctor informed the complainant that Pradyumn had died. On receipt of information, police recorded FIR No.250 dated 08.09.2017 at Police Station Bhondsi (Gurugram) and arrested Ashok Kumar son of Ami Chand on the same day. Petitioners Francis Thomas and Jayesh Thomas were arrested on 11.09.2017.

Vide State notification dated 17.09.2017 and notification issued by Ministry of Personnel, Public Grievances and Pension (Department of Personnel and Training), New Delhi dated 22.09.2017, investigation of the case was transferred to Central Bureau of Investigation (CBI), which

re-registered the aforesaid FIR as case bearing No.RC 8(S)/2017/SC-III/New Delhi on 22.09.2017, which is reproduction of the FIR recorded by Police Station Bhondsi.

Learned counsel for petitioner Francis Thomas has argued that Francis Thomas is head of the Northern Region of Ryan Group which runs chain of Ryan International Schools. He is having his office in another Branch and not in the Ryan International School, Bhondsi, where the incident took place. There is no allegation or averment that he was in actual charge/control over the school. He has been involved in this case by attracting provisions of Section 75 J.J. Act which are not applicable against the petitioner as he was not in actual charge or control over the child, who was murdered by a miscreant in Ryan International School, Bhondsi. Due to public outcry and sensitization of the case by media, Government of Haryana became increasingly active and Education Minister of the State made certain remarks against the school and the management. After his arrest, the petitioner was produced in Court and was remanded to two days police custody. The present bail application was filed directly in this Court as District Bar Association, Gurugram and Bar Association, Sohna vide their Resolutions dated 09.09.2017 (Annexures P-4 and P-5) have resolved that no Advocate from the Bar would appear on behalf of accused in this case. Despite the Resolution of the Bar, an Advocate Mr. Mahim appeared before the Court at Gurugram for the petitioners but he was advised by the local Bar not to represent the petitioners. This led to filing of Writ Petition on 13.09.2017 before Hon'ble Supreme Court to transfer the present case from Gurugram as there was serious prejudice to accused due to Resolution

of the Bar, media coverage and political involvement.

After the case was taken over by CBI, it moved request for police remand of petitioners and main accused Ashok Kumar vide application dated 23.09.2017, which was allowed vide order of even date passed by Additional Sessions Judge, Gurugram. On 25.09.2017 CBI moved another application before Additional Sessions Judge, Gurugram seeking judicial custody of the petitioners Francis Thomas and Jayesh Thomas which was allowed on 25.09.2017. The matter is still under investigation of CBI. Only allegation against the petitioners is under Section 75 J.J. Act. They are not directly or even remotely involved in the murder of the deceased which even as per management was unfortunate incident committed by Ashok Kumar. In these circumstances, no purpose will be served by keeping petitioner Francis Thomas in custody and he be allowed regular bail.

Learned counsel for petitioner Jayesh Thomas has argued that the police was so much swayed by the public and media pressure that it arrested petitioner Jayesh Thomas, a Chartered Accountant, who is employee of Shine Education & Management Consultants Pvt. Ltd. Said company is primarily engaged in book keeping, accounting services, tax consultancy etc. and Ryan Group, which is also running Ryan International School at Bhondsi, is one of its clients. Petitioner is looking after accounts of Ryan Group as a representative of this company and had no control over the affairs or management of the school. Even the CBI has not dared to deny this fact in its reply.

Learned Retainer counsel for CBI has argued that investigation

in this case has revealed the careless attitude of school authorities towards the safety of the school children. Lapses were found in the security steps like CCTV Cameras, security Guards etc. in the school. Both the petitioners were arrested on 11.09.2017 and Section 75 of J.J. Act and Section 34 of Indian Penal Code were added during investigation. The police has also added Section 12 of POCSO Act, as during investigation it appears that child was sexually assaulted. Gurugram police had found during investigation that Jayesh Thomas was reporting to Francis Thomas and both the Petitioners being responsible for management of the school were responsible for protection and care of the children. Lapses on their part led to the gruesome murder of seven years old boy in the school.

Learned Retainer counsel for CBI has further argued that the bail in this case has been sought in case registered by Bhondsi Police and after the CBI has taken over the investigation and registered a new case, these petitions are not maintainable. Even otherwise, the remedy available to the petitioner is before Special Judge, CBI, Haryana at Panchkula. Investigation of the case is at crucial stage and release of the petitioners will provide the petitioners opportunity to interfere with the evidence/witnesses and also to flee from the process of justice and law. The Bar Association Gurugram had withdrawn its Resolution dated 09.09.2017 and this fact find reference in the order of Apex Court in Writ Petition (Criminal) No.139 of 2017 passed on 18.09.2017. The petitioner-accused Francis Thomas being the Regional Head of Ryan International School cannot escape his liability and criminal negligence and is not entitled to regular bail at this stage.

In case of Jayesh Thomas, learned Retainer counsel for CBI has

denied his averments about his being employee of M/s Shine Education and Management Consultants Pvt. Ltd. but has not come up with a specific plea that he is direct employee of Ryan International School, Bhondsi. CBI has taken the similar pleas while contesting his bail application as have been taken in the case of Francis Thomas.

Learned counsel for the complainant has argued that after the murder of the child, the scene of crime was tampered and cleaned. It is a matter to be seen by investigating agency as to on whose order or direction, it was so done and the reason behind it. The petitioners are in management of the school and as such, are responsible for the murder of the child. He had also referred to an affidavit filed by Central Board of Secondary Education in a Writ Petition filed by the complainant in Hon'ble Apex Court, wherein school management has been held to be on lapse but later fairly conceded that the same cannot be used against the petitioners as they are not party before the Hon'ble Apex Court in that Writ Petition. He has argued that CBI has taken over this case on 22.09.2017 and is in process of finding the mens rea behind the crime. The offence against the petitioners is not only under Section 75 of J.J. Act but they are also liable for the substantive offence under Section 302 read with Section 34 IPC.

I have carefully perused the paper book and the documents referred by learned counsel for the petitioners and learned Retainer counsel for CBI and counsel for the complainant.

Firstly, I take the issue raised by learned Retainer Counsel for CBI regarding maintainability of present bail applications. The petitioners have filed this petition on 14.09.2017 directly in this Court as by that time,

they were not getting assistance of any Advocate at Gurugram and Sohna because of the Resolutions of Bar Associations of Gurugram and Sohna, wherein it was resolved that its members will abstain from appearing on behalf of accused persons in this case.

On 18.09.2017, when the Writ Petition (Criminal) NO.139 of 2017 was taken up before the Hon'ble Apex Court, it was apprised that District Bar Association, Gurgaon(Gurugram) has withdrawn the Resolution not to represent the accused in this case and Hon'ble Apex Court observed as follows:-

“At this stage, it is necessary to state without any hesitation that an accused, whatever the offence may be, has the inherent right to be represented by a counsel of his choice. The tradition of the Bar and the fundamental conception pertaining to access to justice does not permit any Bar Association to pass a resolution of the nature that had been done. However, the solace is that after realising the fault, the Bar Association has withdrawn the resolution. It is a redeeming act.”

At the time of filing of the present petition, the petitioners were not having assistance of the lawyers at Gurugram. Even otherwise, the jurisdiction of this Court to grant the bail under Section 439 Cr.P.C. is concurrent with the Court of Session. At the time of filing of this petition, petitioners were facing the FIR registered at Police Station Bhondsi. CBI after taking over the investigation of the case has re-written the same FIR. After impleading the CBI as party, there arises no reason to deny the consideration of the applications filed by the petitioners on technical ground that CBI has registered fresh FIR on the similar allegations which are

subject matter of the FIR registered at Police Station Bhondsi.

After order of the Apex Court dated 18.09.2017, petitioners moved application before Additional Sessions Judge, Gurugram seeking regular bail which was declined vide order dated 18.09.2017. In that bail application, prosecution has put forth submission that the case against both the petitioners is made out under Section 75 of J.J. Act. The submission of public prosecutor which find reference in para 8 and 9 of the order passed by Additional Sessions Judge are reproduced as follows:-

“8. *Learned P.P. on the other extreme counters his arguments stating that offence allegedly committed by the accused are covered under the third proviso of Section 75 of J.J. Act where the punishment is prescribed as not less than 3 years but which may extend upto 10 years and shall also be liable to fine of Five Lakhs rupees.*

9. *Another leg of argument of learned Public Prosecutor is that both the accused had been in the controlling position of the school administration and the committee appointed for one such purpose, by D.C, Gurugram, has reported in writing that large number of defects in the security arrangement, management of the school premises, maintenance of the staff members in the school, and these violations include non affixation of sufficient CCTV cameras with good quality of video recording, lack of separate toilets for staff, unsafe construction of toilet, broken boundary wall of the school, installation of expired fire extinguisher and lack of police verification of class 4th employees and these violations have been blatantly made by school administration which remain in effective supervision and control and information of the accused. On these*

facts as the offence is non-bailable apparently, no plea of offence being bailable can be entertained on behalf of the defence counsel.”

Learned Additional Sessions taking note of above facts declined the bail to the petitioners for negligent and proper management of the school, where the incident had taken place. In the concluding para, learned Additional Sessions Judge has observed as follows:-

“17. As such I finally hold that primarily the allegations against two accused are under section 75 (proviso 3) where maximum punishment is not less than 3 years but which may be extended upto 10 years. Under section 86 of the said act, it is cognizable offence, non-bailable and triable by Children's Court. In the facts and circumstances of the cases, concession of bail cannot be granted to the applicant-accused on the ground of offence being bailable. Hence, the plea of the defence counsel on this ground fails.”

After the dismissal of the bail application of petitioners by Additional Sessions Judge, Gurugram, there was no reason for them even to approach the Court of Special Judge, CBI Haryana at Panchkula.

Admittedly, allegation against the petitioners are for lapse in the management. So far as Jayesh Thomas is concerned, learned Retainer counsel for CBI or the complainant have not been able to show even prima facie evidence that he was an employee of Ryan Group or the school where the incident took place. It is a fact to be seen by the CBI as to what role this petitioner could have in the management even if it be believed that he has been appointed to look after the accounts of the Ryan Group. The mere fact that the Principal had to bring to the notice of Jayesh Thomas all the

proposals while seeking necessary sanction is not sufficient to draw any inference at this stage that he was in effective management of the school.

Now, I have a look at Section 75 of J.J. Act, which reads as follows:-

*“75. Whoever, having the **actual charge of, or control over, a child**, assaults, abandons, abuses, exposes or wilfully neglects the child or causes or procures the child to be assaulted, abandoned, abused, exposed or neglected in a manner likely to cause such child unnecessary mental or physical suffering, shall be punishable with imprisonment for a term which may extend to three years or with fine of one lakh rupees or with both:*

Provided that in case it is found that such abandonment of the child by the biological parents is due to circumstances beyond their control, it shall be presumed that such abandonment is not wilful and the penal provisions of this section shall not apply in such cases:

Provided further that if such offence is committed by any person employed by or managing an organisation, which is entrusted with the care and protection of the child, he shall be punished with rigorous imprisonment which may extend up to five years, and fine which may extend up to five lakhs rupees:

Provided also that on account of the aforesaid cruelty, if the child is physically incapacitated or develops a mental illness or is rendered mentally unfit to perform regular tasks or has risk to life or limb, such person shall be punishable with rigorous imprisonment, not less than three years but which may be extended up to ten years and shall also be liable to fine of five lakhs rupees.”

The most important aspect to be seen during investigation is whether petitioners were having actual charge or control over the child (victim) and secondly whether in the case of murder of the child, provisions of Section 75 of J.J. Act are applicable against the management The

allegations against the petitioners are of lapse in taking the adequate security measures. It again is a matter of investigation and proof during trial that the petitioners have not taken the adequate security measures which led to the offence committed in the premises of the school.

In the facts and circumstances of the case, no useful purpose will be served by keeping the petitioners in custody. Apprehension as expressed by learned counsel for CBI in its reply that in the event of bail being allowed, the petitioners may hamper with the prosecution evidence or prevail upon the witnesses or flee from the country is without any basis.

keeping in view the above facts but without expressing any opinion on merits, both the petitions are allowed. Petitioners Francis Thomas and Jayesh Thomas are ordered to be released on regular bail in case registered by CBI bearing No. RC 8(S)/2017/SC-III/New Delhi dated 22.09.2017 for the offences punishable under Sections 302 read with Section 34 IPC, 25 of Arms Act, 75 J.J.Act, and 12 of POCSO Act, 2012 on furnishing bail bond and surety bond to the satisfaction of Chief Judicial Magistrate/Duty Magistrate, Gurugram subject to following terms:-

- a. The petitioners shall comply with the conditions mentioned in Section 437(3) Cr.P.C.
- b. In the event of their absence on any date of hearing, the benefit of bail allowed to the petitioners shall stand withdrawn. The trial Court shall be competent to cancel their bail bond and surety bond and proceed to procure their presence in accordance with law. In that eventuality the petitioners shall have to apply for bail afresh.
- c. They shall not leave the country without the prior permission of the Court.

(SURINDER GUPTA)
JUDGE

October 07, 2017
Sachin M.