

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Criminal Revn. No.711 of 2017 (O&M)

Date of Decision: March 16, 2017

Hassandin @ Haasu Gujar son of Sh.MariddinPetitioner

Versus

State of PunjabRespondent

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

Present: Mr.Vipin Mahajan, Advocate for the petitioner.

Mr.Varun Sharma, Assistant Advocate General, Punjab.

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TEJINDER SINGH DHINDSA, J.

A bail application preferred by the present petitioner was dismissed vide order dated 25.1.2017 by the Principal Magistrate, Juvenile Justice Board, Pathankot. Similar relief sought before the Additional Sessions Judge, Pathankot has been declined vide order dated 7.2.2017.

2. The instant revision petition is directed against the afore-noticed two orders.

3. Brief facts that may be noticed are that initially, FIR No.19 dated 8.9.2013 under Sections 307, 341, 148, 149 of the Indian Penal Code and 25,27,54,59 of Arms Act was registered on the statement of Fazal Deen. As per version contained in the FIR, on 7.9.2013 at about 5.00 a.m., six persons came in a Mohindra Scorpio vehicle armed with weapons and caused injuries on the person of Des Raj with a .12 bore firearm. Investigation is stated to have been conducted by the police authorities and it was found

that the FIR had been falsely registered by Fazal Deen in connivance with Gammi, Des Raj, Attar Deen and the present petitioner. Accordingly, the investigating agency nominated the petitioner and others as accused in the same very FIR for having committed offence under Sections 120-B, 211, 182 of the Indian Penal Code and 25, 27, 54, 59 of the Arms Act. Petitioner was declared a proclaimed offender vide order dated 12.9.2016, but thereafter has been detained in Observation Home, Hoshiarpur.

4. Bail application preferred by the petitioner was dismissed by the Principal Magistrate, Juvenile Justice Board, Pathankot on 25.1.2017 by voicing an apprehension that release of the juvenile would defeat the ends of justice and there are overwhelming chances of “moral and psychological decay”. The Principal Magistrate has even been swayed by the serious charges levelled against the petitioner.

5. The Additional Sessions Judge, Pathankot has thereafter also declined the benefit of bail by observing that a “bail application” has been filed, whereas only “appeal” was maintainable. The other basis for rejection of bail emanating from the impugned order dated 7.2.2017 passed by the learned Additional Sessions Judge is that the bail application did not disclose the factum of the petitioner having been declared a proclaimed offender.

6. Having heard learned counsel for the parties, I am of the considered view that the present revision petition deserves to succeed.

7. The date of birth of the petitioner is stated to be

15.6.1998. As such, on the date of alleged occurrence, i.e. on 7.9.2013, the petitioner was 15 years and 3 months of age. Learned State counsel does not dispute that the petitioner was a juvenile at the relevant point of time.

8. Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (in short 'the Act') 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 [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.”

9. A bare reading of the provision reproduced hereinabove, would make it apparent that an exception has been carved out for declining the 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. For invoking such exception, there has to be some material before the competent authority on the basis of which, it can be held that the release of the juvenile in the present case would fall within the exception recognized under Section 12 of the Act. The impugned order dated 25.1.2017 passed by the Principal Magistrate, Juvenile Justice Board, Pathankot is completely bereft of any such reasoning. No such material/evidence has been adverted to in the order. Such aspect has been overlooked even in the order dated 7.2.2017 passed by the Additional Sessions Judge, Pathankot.

10. Seriousness of the offence 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.

11. That apart, the view taken by the learned Additional Sessions Judge, Pathankot while passing the impugned order dated 7.2.2017 as regards only appeal being maintainable is highly technical. Undoubtedly, an appeal is maintainable under Section 52 of the Act before the Court of Sessions within a period of 30 days from the date of passing of an order by the Principal Magistrate of the Juvenile Justice Board concerned. In the present case, after rejection of bail by the Principal Magistrate, Juvenile Justice Board, Pathankot, the petitioner had approached the Additional Sessions Judge, Pathankot by filing an "application". It was very well open for such application to have been treated as an appeal. Even the observations as regards the petitioner having been declared a proclaimed offender would not be of any consequence inasmuch as the petitioner, concededly, had thereafter been detained in the Observation Home.

12. For the reasons stated above, the revision petition is allowed. Impugned orders of both the Courts below are set aside. Petitioner is entitled to bail under Section 12 of the Act.

13. Accordingly, it is directed that the petitioner be released on bail subject to furnishing bail bonds to the satisfaction of Chief Judicial Magistrate/Duty Magistrate, Pathankot.

14. Petition allowed in the aforesaid terms.

(TEJINDER SINGH DHINDSA)
JUDGE

March 16, 2017

SRM

Note: *Whether speaking/reasoned?* *Yes/No*

Whether Reportable? *Yes/No*