

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

**Crl. Revision No.851 of 2017 (O&M)
Date of Decision: March 22, 2017**

Ashish

.....PETITIONER(s).

VERSUS

State of Haryana

....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Vijay Pal, Advocate
for the petitioner (s).

SURINDER GUPTA, J.

Heard.

This is petition against the order passed by Juvenile Justice Board, Bhiwani whereby petitioner who was 17 years and 6 months of age at the time of commission of offence of murder of husband of complainant, was ordered to be tried as an adult by the Children Court. The order was affirmed by Sessions Judge, Bhiwani in appeal.

As per provisions of Section 15 of Juvenile Justice Act, if a heinous offence is alleged to be committed by a child, the Board after committing preliminary assessment with regard to the mental and physical capacity of the child, may pass order under the provisions of Sub Section 3 of Section 18 of Juvenile Justice (Care and Protection of Children) Act, 2015 ((later referred to as 'the Act'), which provides as follows:-

“(3) Where the Board after preliminary assessment under section 15 pass an order that there is a need for trial of the said child as an adult, then the Board may order

transfer of the trial of the case to the Children's Court having jurisdiction to try such offences."

Admittedly, the offence in this case is a heinous offence.

Learned counsel for the petitioner has argued that the inquiry conducted by the Juvenile Justice Board before passing the order as required under Sub Section (3) of Section 18 of the Act, was not as per the spirit of Section 15(1) of the Act. The questions, which were put to the petitioner by the Board, were general questions and no question regarding the offence in this case and the consequences of the offence were put to the petitioner.

Section 15(1) of the Act reads as follows:-

"15. (1) In case of a heinous offence alleged to have been committed by a child, who has completed or is above the age of sixteen years, the Board shall conduct a preliminary assessment with regard to his mental and physical capacity to commit such offence, ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence, and may pass an order in accordance with the provisions of subsection (3) of section 18:

Provided that for such an assessment, the Board may take the assistance of experienced psychologists or psycho-social workers or other experts.

Explanation.—For the purposes of this section, it is clarified that preliminary assessment is not a trial, but is to assess the capacity of such child to commit and understand the consequences of the alleged offence."

The Juvenile Justice Board before passing the order had examined the petitioner to know as to whether he knows about the offence

and its consequences and his physical capacity. A question was also put to him about consequences of offence committed by a person. No doubt, the Board has not put any specific question with regard to the offence committed in this case and rightly so because the Board was not required to confront the petitioner with version of the prosecution in this case as it is a subject matter of trial and the Board to its wisdom rightly skipped to put any question with regard to the facts of the case in hand. On confronting the petitioner with various questions, which find mentioned in Annexure A-3, the Board concluded as follows:-

“Section 15 of Juvenile Justice Act clearly lays down that a Juvenile Justice Board is legally bound to conduct a preliminary assessment in 'Heinous Offence’ with regard to mental and physical capacity of child in conflict with law to commit an offence if he has completed age of 16 years. Though there are no guidelines regarding preliminary assessment stipulated under Section 15 of the Juvenile Justice Act but Draft Model Rules, 2016, under the Juvenile Justice (Care and Protection of Children) Act, 2015 can be used as light house. Rule 14 of the aforesaid Rules clearly lays down that the objective of the preliminary assessment will be to evaluate the role of the child in conflict with law in the alleged offence as well as his mental condition and background. A careful perusal of the final report clearly reveals that the child in conflict with law actively participated in the commission of offence and a *danda* was also recovered from him. A careful perusal of Social Investigation Report qua the child in conflict with law clearly show that the child in conflict with law was fully mature to understand the consequences of his acts. Aforesaid report also reveal that the child in conflict with law was physically capable to

commit the offence. A careful perusal of personal examination report of the child in conflict with law clearly reveals that he is fully mature to understand the consequences of a criminal act and his acts. He was found physically fit to commit an offence. Aforesaid facts are sufficient to dispel the presumption of innocence of the child in conflict with law. At this juncture, it is desirable to mention that the age of child in conflict with law was 17 years and 6 months. It means, he was just going to touch age of 18 years. It is not version of the child in conflict with law that he is a drug addict or he has suicidal tendency or he has been exposed to media, internet including to pornography and media depicting violence or he committed the offences under extreme mental trauma or he has a history of abuse and exploitation or he had done the offence for his survival or he had been himself remained as a victim of any offence or he suffered from any mental illness. It is again pertinent to be mentioned here that the child in conflict with law or his counsel failed to pin point anything during preliminary assessment that the child in conflict with law was not physically and mentally fit to commit the offences and he had no idea of his consequences.”

On perusal of the order passed by Juvenile Justice Board, Bhiwani and affirmed by the Appellate Court below, I find no legal or factual infirmity therein calling for any interference.

This revision petition has no merits.

Dismissed.

March 22, 2017
Sachin M.

(SURINDER GUPTA)
JUDGE