

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

CRR-4102-2017(O&M)

Date of decision:- 21.3.2018

Vishvender

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Ashit Malik, Advocate
for the petitioner.

Mr.Gaurav Bansal, AAG, Haryana.

H.S. MADAAN, J.

Under challenge in this revision petition is order dated 26.10.2017 passed by Presiding Officer, Children Court, Mewat, vide which an application under Section 439 Cr.P.C. moved on behalf of the petitioner/juvenile in conflict with law, under Section 12 of the Juvenile Justice Act was dismissed.

Briefly stated, facts of the case are that criminal machinery in this case was set into motion by complainant Mukim son of Jumme Khan, resident of Bhuriyaki, Police Station Punhana, District Nuh, aged about

18-19 years, a student of 10+2 class, who in his statement to the police stated that his father was employed with Haryana Gramin Bank, Shingar Branch; that on the fateful day his father had gone to distribute old age pension in village Andhaki and Lafoori; that he had gone along with his father on motorcycle make Splendor and they had reached village Lafoori; that there the complainant started making list of pensioners; that father of complainant left for Haryana Gramin Bank, Shingar for bringing money; that he was bringing Rs.4 lakhs from the bank at village Shingar to village Lafoori; that at about 11 O' clock, the complainant came to know that three known boys had fired at his father and snatched the money between village Shingar and Lafoori; that the complainant went there and found that his father had suffered bullet injuries on forehead and hip; that the complainant with the help of passersby brought his father to CHC Punhana for treatment and got him admitted there, from where he was referred to Narhad Hospital but while being taken to said hospital, injured succumbed to the injuries on the way. On the basis of that statement, formal FIR was registered and case was investigated. Accused Tarif @ Kala was arrested on the basis of suspicion and while being interrogated, he stated that he had planned the robbery along with co-accused Mausim @ Polad and had taken help of Harun, Totaram @ Vinod as well as petitioner – Vishvender in execution of the plan. Shots had been fired by the petitioner. Weapon of offence i.e. .315 bore country-made pistol, one live cartridge and motorcycle used in the incident were recovered from the possession of co-accused Mausim @ Polad, whereas a sum of Rs.45,000/- was recovered from the petitioner. The petitioner was arrested on

19.5.2017 and presently, he is lodged in Observation Home, Faridabad. He had applied for bail in Children Court, Mewat but it was declined on 14.9.2017. The petitioner had approached this court by filing CRM-M-36986-2017 but it was dismissed as withdrawn granting liberty to the petitioner to approach the Court concerned under provisions of Juvenile Justice Act, 2015. Thereafter, the petitioner had filed an application under Section 12 of the Juvenile Justice Act before Children Court, Mewat, which was dismissed on 26.10.2017.

Such order left the petitioner aggrieved and he has filed the present revision petition, notice of which was issued to the respondent – State, which put in appearance through counsel.

Learned State counsel has opposed the petition vehemently.

I have heard learned counsel for the parties besides going through the record and I do not find any merit in the revision petition.

The order passed by the Children Court, Mewat is well reasoned one keeping in view the settled law on the subject as well as facts and circumstances of the case. Para No.7 of that order is important and is being reproduced for ready reference:

As per Section 12 of the Act, the juvenile in conflict with law is entitled to bail except in a case where there appears reasonable ground for believing that his release is likely to bring him in association of known criminals or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice. If the facts of the case in hand are perused, it comes out that the petitioner

had conspired with co-accused and had planned to rob the deceased who, they knew, was having money with him. Under the said conspiracy, all of them had way-laid the deceased, robbed him of the amount available with him and murdered him. The petitioner had fired on the forehead of the deceased with his country made pistol. Although, the weapon of offence was not recovered from him, but the allegations against him are very serious, and moreover, a sum of Rs.45,000/- out of robbed amount was recovered from. The witnesses of the prosecution have not yet been examined in the case. He is already associated with known criminals and had elements and if he is released on bail, he will be exposed to moral, physical or psychological danger. Thus, his release would not meet ends of justice. The law laid down by the learned counsel for the petitioner in the reported case, is thus, not applicable to the facts of the present case. After dismissal of the first bail application by this Court, no new ground has arisen, which could entitle him for concession of bail u/S 12 of the Act. Only two formal witnesses have been examined in the meanwhile. Thus, at this stage, the petitioner is not entitled for concession of regular bail. Hence, his application, being devoid of merits, is hereby dismissed.

The Court below has observed that in pursuance of the conspiracy hatched by petitioner and his co-accused, the deceased was

way-laid, robbed of the amount and then murdered and it was petitioner, who had fired on forehead of deceased from country-made pistol. Recovery of Rs.45,000/- out of the robbed amount points out towards his involvement in the incident.

As regards his name cropping up in the disclosure statement of co-accused Tarif @ Kala, such disclosure statement of co-accused can certainly be taken into consideration for providing lead in investigation and even during trial it is admissible under Section 30 of the Indian Evidence Act. Learned Court below has observed that the witnesses of the prosecution have not yet been examined and petitioner is already associated with known criminals and bad elements and if he is released on bail, he would be exposed to moral, physical or psychological danger, as such his release would not meet ends of justice.

I do not find any illegality or infirmity with this order so as to interfere therewith while exercising revisional jurisdiction.

It is well settled law that the revisional jurisdiction of this Court is quite limited. This Court is to interfere only if there is an illegality or infirmity apparent on the face of the judgment/order passed by a Court below or the same is perverse. Merely because another view in the matter is possible, no inference with such judgment is to be done.

Finding no merits in the petition, the same stands dismissed.

21.3.2018
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No