

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

CRR No.4584 of 2017 (O&M)

Decided on: 19.02.2018

Neha

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. N.S. Sodhi, Advocate for the petitioner.

Ms. Samina Dhir, DAG, Punjab.

Mr.Kamaldeep Singh Sodhi, Advocate for the complainant.

ARVIND SINGH SANGWAN, J.

Prayer in this revision petition is for setting-aside the impugned order dated 09.08.2017 passed by the Principal Magistrate, Juvenile Justice Board, Jalandhar vide which the regular bail of the petitioner who is declared as a juvenile vide order dated 26.07.2017 by the Juvenile Justice Board has been dismissed as well as the order dated 30.10.2017 passed by the Additional Sessions Judge, Jalandhar dismissing the appeal filed by the petitioner.

Brief facts of the case are that FIR No.249 dated 09.07.2017 under Sections 302, 201, 120-B read with Section 34 of the Indian Penal Code (in short 'IPC') was registered on the statement of Harbans Lal that he has two sons and two daughters. His younger son namely Honey aged about 18 years was studying in class 11th. On 08.07.2017, at about 06:00 pm, his son Honey had gone to fetch fodder but did not return to home. At about 08:15 pm, he rang up his cell

phone number 7710464534 but did not get any response. Thereafter, he along with his family members tried to locate him throughout the night but could not find him. On the next day at about 07:00 am, he along with his neighbour had gone to canal where he found blood on the earth and one footwear of his son Honey and, therefore, he believing that he has been murdered by some unknown person and they have thrown the dead body in the canal, thereafter the FIR was registered.

During the investigation, two persons namely Gagandeep Singh and Tejinder @ Ajay were arrested and Gagandeep Singh made a disclosure statement that the petitioner – Neha (juvenile) was having friendship with co-accused Tejinder @ Ajay and she in conspiracy with them got murder of Honey as he used to inform her family member about her love affair with Tejinder @ Ajay.

Counsel for the petitioner has submitted that admittedly the date of birth of the petitioner (juvenile) is 07.12.2002 and on the date of occurrence i.e. 08.07.2017 she was even less than 15 years of age. It is also stated that she was a student of class 9th and she has been involved in the FIR on the basis of the disclosure statement of the co-accused and her name was not mentioned in the initial investigation. It is also stated that the story of friendship of the petitioner with the accused person is falsely created and she being a juvenile even if released on bail cannot tamper with the evidence in any manner as she is the first offender. Counsel for the petitioner has further submitted that the Hon'ble Supreme Court of India in case of ***“Swati Maliwal Jaihind Chairperson Delhi Commission of Women vs Raju through Juvenile Justice Board and others”***, 2016(1) Recent Apex Judgments 18, has

held as under:-

“Rule 17 (3) provides that the release shall be as per the pre-release and post-release plan prepared under the Individual Care Plan and reviewed from time to time by the Management Committee set up under Rule 55. Rule 50 (12) provides for developing an individual care plan with the ultimate aim of the child being rehabilitated and reintegrated based on their case history, circumstances and individual needs. Such individual care plan specifically needs consultation with the concerned juvenile while determining his care plan. Rule 55 makes it mandatory for the Management Committee to consider and review periodically post-release or post restoration follow up. Rule 65 also provides for a detailed procedure of restoration of the juvenile back to the family and follow-up action by the Juvenile Justice Board. It also includes when a juvenile expresses his unwillingness to be restored back to the family, the Board shall make a note of it in its records in writing and such juvenile shall not be coerced or persuaded to go back to the Probation Officer establishes that restoration to family may not be in the best interest of the juvenile or if the parents or the guardians refuse to accept the juvenile back. The said Rule also provides for submitting a quaterly follow-up report to the JJB by the concerned Child Welfare Officer or Probation Officer or the non-governmental organization for a period of two years. The follow-up report shall clearly state the situation of the juvenile post restoration and the juvenile's needs to be met by the State Government in order to reduce further vulnerability of the juvenile.”

Similar view was observed in cases **“Manoj Singh vs State of Rajasthan” 2004 (2) RCC 995, “Lal Chand vs State of Rajasthan” 2006 (1) RCC 167, “Prakash vs State of Rajasthan” 2006**

(2) RCR (Criminal) 530 and “*Udaibhan Singh @ Bablu Singh vs State of Rajasthan*” 2005 (4) Crimes 649.

Counsel for the petitioner has further argued that the Courts below have not properly appreciated the provisions of Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (in short 'the Act'), which is reproduced 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 1 [or placed under the supervision of a Probation Officer or under the care of any fit institution of 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.”

Both the Courts below have declined bail to the petitioner-jvenile only on the ground that her release would bring her in association with known criminals or expose him to moral, physical or psychological danger.

In the present case while declining bail, the relative provisions have not been considered by both the Courts below, whereas, as per provisions of Section 12 of the Act, 2000, the Juvenile is entitled to bail as a matter of right unless the case falls in the exceptions carved out in the provision itself but nothing was available on record to show that any of the three exceptions prescribed under Section 12 (1) of the Act, 2000 was existing.

The word “**association**” has been defined in Concise Oxford Dictionary (6th Edition) as an act of associating; organised body of persons for a joint purpose; fellowship, companionship; mental connection between related ideas.

The above meaning of word “**association**” has also been adopted in Legal Glossary, Government of India, 1988 Edition.

Thus, to prove “**association**”, it must be shown that the persons so joined, have a common purpose and that there is a mental connection between their related ideas. In such view of the matter, if a person has joined a known criminal or criminals only in a single case, by that, it cannot be inferred that this single act would bring that person in association with known criminal (s). There can be apprehension of his associating with known criminal (s) only when there is sufficient evidence to show that he has been joining them regularly so as to give an impression that he would continue to join them in future also.

The petitioner in the present case is stated to be the student and her family is not having any criminal background as nothing in this regard has been mentioned in both the orders while declining bail and it has not come on record that the social investigation report sent to the Court by Probation Officer is unfavourable to the juvenile for her release on bail. The object of the Act is to provide care, protection, development and rehabilitation of neglected and delinquent juveniles.

A perusal of Section 12 of the Act, 2000 reveals that it incorporates a non-obstante clause which means that irrespective of anything contained in the Code of Criminal Procedure or in any other law for the time being in force, a juvenile in conflict with law has to be released on bail; refusal of bail is possible only in three eventualities which are well explained in Section 12 of the Juvenile Act itself. It, thus, follows that refusal of bail to a juvenile is to be ordered only in any of the three situations specified under Section 12(1) of the Juvenile Act. These three situations reads as below:

- (i) if there appear reasonable grounds for believing that the release of the juvenile is likely to bring him into association with any known criminal;*
- (ii) the release will expose the juvenile to moral, physical or psychological danger; and,*
- (iii) his release would defeat the ends of justice.*

Even while denying the benefit of bail to a juvenile in conflict with law, the court has not only to refer to one or more of these three grounds but also to record its satisfaction founded on some relevant material, availability of which has to be shown on the record.

It, thus, implies that no reasons other than those mentioned

in Section 12(1) of the Juvenile Act are to be valid for refusal of bail. Since gravity of the offence is not incorporated as one of the reasons for refusal of bail, this ground cannot be taken into consideration for rejection of request for bail.

It is further submitted that both the Courts below have given only one reason that if the petitioner/juvenile is released on bail she will get encouraged and will become a danger to the society and it would defeat the ends of justice. However, no such material has been referred while arriving at a conclusion.

The Courts below have relied upon the judgment passed by the Hon'ble Supreme Court of India “*Mukarrab etc. vs State of U.P.*”, **2017(1) RCR (Criminal) 103**. There is no dispute with regard to the guidelines given by the Hon'ble Supreme Court in this case, however, the Hon'ble Supreme Court has taken notice of the fact that the accused – Mukarrab was involved in 24 cases of various offences and the other accused was also involved in series of offences. It was, thus, held by the Hon'ble Supreme Court that taking into account the history sheet of the appellants, no benefit can be extended to them. Since, the facts of the said case are entirely different with the present case as the petitioner – Neha is a young girl aged about 14½ years on the date of commission of offence and is not involved in any other case, the finding recorded by the Courts below that the juvenile has committed the heinous crime showing maturity of mind is not based on the facts of the present case.

In reply counsel for the State as well as counsel for the complainant has opposed the prayer for bail on the ground that there is

an evidence of call details between the petitioner and co-accused and in the disclosure statement, the co-accused have stated that the petitioner has conspired to commit the offence. However, it is not disputed that the petitioner is not involved in any other case and there is no background in the family of the petitioner about any criminal litigation.

After hearing counsel for the parties, I find that both the Courts below have not satisfied the requirement of provision of Section 12(1) of the Act and without having any material on record, the bail application of the petitioner has been declined and, therefore, the impugned orders are not sustainable in the eyes of law and are liable to be set-aside.

It is worth noticing that the petitioner was aged about 14 years and 06 months at the time of commission of offence and was a student of class 9th and she is in custody since 15.07.2017. As per the State counsel, the charges have already been framed and only examination-in-chief of one prosecution witness is recorded so far.

In view of the above, the impugned orders dated 09.08.2017 and 30.10.2017 are set-aside and the petitioner is directed to be released on bail subject to furnishing bail/surety bonds to the satisfaction of the Principal Magistrate, Jalandhar and to the following conditions:-

1. *The petitioner is placed under supervision of the probationary officer, who shall file periodical reports over the Juvenile before the Board till the inquiry against her is completed in the proceedings.*
2. *The father of the petitioner shall stand as a surety for release of the petitioner on bail. He shall*

execute a bond for Rs.50,000/- undertaking good conduct of juvenile and also in keeping her away from associating with criminal while she continues to be on bail in the present proceedings.

3. The petitioner and her father shall report before the Juvenile Justice Board as and when directed without default till the proceedings are over.

4. In the event of any adverse report filed against the juvenile by the probation officer or on any default or violation of the conditions imposed above, it is open to the Juvenile Justice Board to revoke the bail granted to the petitioner without having any further orders from this Court.

Disposed of.

19.02.2018
yakub

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No