

S.No.221

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

CRR No.1290 of 2019 (O&M)

Date of Decision:30.05.2019

Tejinder Singh @ Dhidri

.....Petitioner

Vs.

State of Punjab

.....Respondent

CORAM:- HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present:- Mr. Bikramjeet Singh Jatana, Advocate
for the petitioner.

Mr. K.S. Aulakh, DAG, Punjab.

Rajbir Sehrawat, J.(Oral)

CRM No.17409 of 2019

This is an application for condonation of delay in filing the revision.

Notice in the application.

On asking of the Court, Mr. K.S. Aulakh, DAG, Punjab, accepts notice on behalf of the State. He submits that he has no objection in allowing the application.

For the reasons mentioned in the application, the same is allowed. Delay of 79 days in filing the appeal is condoned.

CRR No.1290 of 2019

This is a petition challenging order dated 04.10.2018 passed by Principal Magistrate, Juvenile Justice Board, Barnala declining bail pending trial to the petitioner who is a juvenile; and the order dated 04.12.2018 passed by Additional Sessions Judge-I, Barnala whereby the appeal filed by the petitioner has been dismissed.

The facts as stated in the case are that the petitioner was driving a Tempoo bearing registration No.PB19H-4749 and he ran over the deceased. However, thereafter, he reversed his vehicle and again struck against the deceased. Therefore, although in the first instance, the case was registered under Section 304 IPC, however, subsequently, the same was converted into Section 302 IPC. But, since the petitioner is of the age of less than 18 years, therefore, he is being tried by Juvenile Justice Board, treating him as a juvenile, for the offence under Section 302 IPC.

It is contended by counsel for the petitioner that Juvenile Justice Board did not even advert to the provisions of Section 12 of Juvenile Justice (Care and Protection of Children) Act (for short, 'the Act'); while considering the application for bail pending trial filed by the petitioner. The only ground given by the Juvenile Justice Board for declining bail to the petitioner is that the offence involved in the case is heinous one. However, provisions of Section 12 of Act does not contemplate dismissal or declining of the bail to a juvenile only on the ground that the offence involved in the case is heinous. Rather, the bail to the juvenile can be declined only in exceptional circumstances, which are delineated in the language of Section 12 of the Act itself. The provisions of Section 12 of the Act contemplates existence of reasonable grounds for believing by the Court that release of a juvenile would bring such juvenile in association with the known criminals or would expose such person to moral, physical or psychological danger or his release would defeat the ends of justice. However, in the present case, the trial Court has not even adverted to these factors. Even the Appellate Court, while dismissing the appeal, and thereby declining bail to the

petitioner, has not taken into consideration the factors mentioned in the above-said Section. It is further submitted that although the Lower Appellate Court has tried to reproduce the ipso dixit of Section 12 of the Act in his order, however, the Court has not mentioned any material on the basis of which; it arrived at a conclusion that the release of the petitioner would bring him in association of known criminal or it would expose the petitioner to moral, physical or psychological danger. Therefore, the orders passed by both the Court below are not sustainable.

On the other hand, learned State Counsel submits that the petitioner has committed a murder in well planned manner; and adopted a modality to show as if it was an accidental death. Hence, the petitioner, though claims to be a juvenile, however, has very advanced and developed faculties actuated by deadly criminal tendencies. Therefore, the petitioner has committed heinous offence, in a cruel manner. Hence, he does not deserve to be released on bail.

Having heard learned counsel for the parties, this Court finds that the provisions of Section 12 of the Act has created a provision for bail to a juvenile by using a 'non-obstante' clause against any other provision of Code of Criminal Procedure. Therefore, under the Act, bail to a juvenile has to be taken as a rule and the denial of the same is only an exception, which can be invoked only in case the Court has some reasonable grounds for believing that a juvenile, if released on bail, would come in contact with some known criminal or his release would expose such person to moral, physical or psychological danger or release of such person would otherwise defeat the ends of justice.

In the present case, this Court finds substance in the argument of learned counsel for the petitioner that the trial Court has not even adverted to the factors mentioned in Section 12 of the Act. So far as the Appellate Court is concerned, although it has recorded in the order that if the petitioner is released on bail then there is likelihood of danger to his mental as well as physical health, however, this opinion of the Court below is not supported by any material on record or even by any circumstances which might be taken as a ground by the Court to so believe. Therefore, even order passed by the Lower Appellate Court is not in conformity with the Section 12 of the Act.

The learned counsel for the petitioner has rightly relied upon the judgment of this Court rendered in **2013(7) R.C.R. (Criminal) 1105 – Pankaj v. State of Haryana**, to contend that if there is no material available on record before the Court to reasonably believe what is prescribed under Section 12 of the Act, then the order passed by the Courts, declining the bail cannot be sustained.

In view of the above, but without commenting any further upon merits of the case, the impugned orders are set aside. Accordingly, it is ordered that the petitioner be released on bail on his furnishing bonds/sureties to the satisfaction of the Juvenile Justice Board/ Duty Magistrate.

May 30, 2019
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(RAJBIR SEHRAWAT)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No