

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

CRR-808-2020

Date of Decision: 09.06.2020.

Sahil @ Nannu

....Petitioner.

Versus

State of Haryana

....Respondent.

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Argued by: Mr. Arpandeep Narula, Advocate for the petitioner.

Mr. Munish Sharma, Assistant Advocate General, Haryana
for the respondent.

Suvir Sehgal, J.

The instant revision petition has been filed by XXX (name withheld), challenging the order dated 30.01.2020 whereby his application for grant of bail under Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for brevity, "the Act") was declined by the Principal Magistrate, Juvenile Justice Board, Sirsa and order dated 13.02.2020 passed by Additional Sessions Judge, Sirsa whereby appeal filed against the said order was dismissed.

In brief, an information was received in the Police Station that two dead bodies were lying in Kutana minor, Nathusari Kala. The SHO alongwith other police officials went to the spot where they found that both the bodies had several grievous injuries and the dead males were found to

case under Sections 302/301 IPC was registered against unknown persons. During investigation, both the bodies were identified. An iron Kapa smeared with blood alongwith bloodstained earth was recovered. It was on the basis of clues, five persons including the present petitioner were arrested. Sections 147/ 148 IPC as well as Section 25 of the Arms Act were added lateron. Two motorcycles were also recovered which were allegedly used at the time of commission of the offence. The arrest of the petitioner had taken place on 15.09.2019.

Leaned counsel for the petitioner has submitted that the date of birth of the petitioner is 03.04.2002. Challan against him has been presented before the Juvenile Justice Board on 10.12.2019 and he is no more required for any further investigation. No recovery is to be effected from him. Relying on the provisions of Section 12 of the Act, the counsel has argued that the petitioner being a child in conflict with law is entitled to bail as a matter of right. His further submission is that the petitioner is not involved in any other case and even in the present case he has been framed up and falsely implicated.

State counsel has opposed the petition for bail and submitted that the petitioner is involved in a heinous crime inasmuch as two murders have been committed by the petitioner alongwith the co-accused. One motorcycle used in the commission of the offence has been recovered at the instance of the petitioner. He has placed on record copy of the custody certificate dated 31.05.2020 and submitted that the petitioner has undergone merely 8 months and 16 days in custody.

I have considered the rival submissions.

There is no dispute about the date of birth of the petitioner. The petitioner was less than 18 years of age on the date of the alleged occurrence. He is a "child in conflict with law" as defined in Section 2(13) of the Act. His application for bail has been filed and has to be dealt with in terms of the provisions of Section 12 of the Act.

The Hon'ble Supreme Court by its order dated 10.02.2020 in ***Re Exploitation of Children in Orphanages in The State of Tamilnadu versus Union of India and others*** 2020(1)RCR (Criminal)1022 observed as under:-

6. *Once a child is produced before a JJB, bail is the rule. Section 12 of the Act reads as follows :-*

12. Bail to a person who is apparently a child alleged to be in conflict with law.-

(1) When any person, who is apparently a child and is alleged to have committed a bailable or non-bailable offence, is apprehended or detained by the police or appears or 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 person:

Provided that such person shall not be so released if there appears reasonable grounds for believing that the release is likely to bring that person into association with any known criminal or expose the said person to moral, physical or psychological danger or the person's release would defeat the ends of justice, and the Board shall record the reasons for denying the bail and

circumstances that led to such a decision.

(2) When such person having been apprehended is not released on bail under sub-section (1) by the officer-in-charge of the police station, such officer shall cause the person to be kept only in an observation home in such manner as may be prescribed until the person can be brought before a Board.

(3) When such person is not released on bail under sub-section (1) by the Board, it shall make an order sending him to an observation home or a place of safety, as the case may be, for such period during the pendency of the inquiry regarding the person, as may be specified in the order.

(4) When a child in conflict with law is unable to fulfil the conditions of bail order within seven days of the bail order, such child shall be produced before the Board for modification of the conditions of bail.

7. Sub-section (1) makes it absolutely clear that a child alleged to be in conflict with law should be released on bail with or without surety or placed under the supervision of a probation officer or under the care of any fit person. The only embargo created is that in case the release of the child is likely bring him into association with known criminals or expose the child to moral, physical or psychological danger or where the release of the child would defeat the ends of justice, then bail can be denied for reasons to be recorded in writing. Even if bail is not granted, the child cannot be kept in jail or police lockup and has to be kept in an observation home or place of safety.

Hon'ble Supreme Court has held that bail to a child alleged to be in conflict with law is the rule.

A child alleged to be in conflict with law should be released on bail notwithstanding anything contained in the Code of Criminal Procedure or any other law for the time being in force, except in the three contingencies specified in Section 12(1). Insofar as the gravity of offence is concerned, it is not to be taken into consideration for denying the concession of bail to such a child.

A child alleged to be in conflict with law can be denied the concession of bail in any of the three situations specified in Section 12(1) viz. (i) if there appears to be a reasonable ground 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.

This view finds support from the judgments passed by this Court which reads as under:-

1. ***Neha Vs. State of Punjab***, 2018(2)R.C.R. (Criminal) 226
2. ***Bittu Vs. State of Haryana***, 2015(2) R.C.R. (Criminal)316
3. ***Atul Kumar and another Vs. State of Haryana***, 2003(4) R.C.R. (Criminal) 404.
4. ***Jabbar Vs. State of Haryana, CRR 4354 of 2016, decided on 14.12.2016.***

The Courts below have failed to give any reason or mention any of the exceptions carved out in Section 12(1) of the Act to deny bail to the petitioner. No material has been placed on the record nor any such

material could be referred to during the course of arguments to show that if

enlarged on bail, the petitioner would be exposed to moral, physical or psuchological danger or would come in contact with known criminals. Mere apprehension of the prosecution without any material would not be a sufficient ground to decline bail to the petitioner. As per the custody certificate, the petitioner has already spent merely 08 months and 16 days in incarceration. No useful purpose would be served in detaining him any further.

Consequently, the revision petition is accepted and the impugned order dated 30.01.2020 passed by the Principal Magistrate, Juvenile Justice Board, Sirsa and order dated 13.02.2020 passed by Additional Sessions Judge, Sirsa are hereby set-aside. Without adverting to the merits of the case, at this stage, the petitioner is ordered to be released on bail subject to furnishing adequate bail/ surety bonds to the satisfaction of the learned Principal Magistrate, Juvenile Justice Board, Sirsa.

The parents of the petitioner shall regularly monitor his movement and ensure that the petitioner does not come in association with any known criminals and does not indulge in any other offence.

It is clarified that any observation made hereinabove, shall not be construed as an expression on the merits of the case.

(SUVIR SEHGAL)
JUDGE

09.06.2020
komal

Whether speaking/ reasoned : Yes/ No

Whether Reportable : Yes/ No