

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

CRR No.862 of 2020 (O&M)

Date of decision:27.05.2020

Vishal

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Anshumaan Bajaj, Advocate
for the petitioner.

Mr. Saurav Mohunta, DAG, Haryana.

SUVIR SEHGAL J.

The instant revision petition has been filed by Vishal, a juvenile in conflict with law, challenging the order dated 04.02.2020 whereby his third 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, Rohtak and order dated 06.03.2020 passed by the Additional Sessions Judge, Rohtak vide which his appeal filed against the said order was dismissed.

In brief, FIR was registered at Police Station IMT Rohtak on the statement of Vinod son of Sant Ram. It was alleged that on 20.09.2019, the complainant was on duty when his father called him at 3.30 p.m. and told him to come home. After about one hour, the complainant reached his street. When his father Sant Ram was talking to him outside his house, petitioner, his father, Sunil and his brother Akash who was carrying a stick,

came there and started hitting the complainant and his father. Sunil hit the complainant from behind with a stick and all three of them also hit his father with it. Both the complainant and his father went to PGIMS Rohtak for treatment. It was alleged that Sunil threatened that he will kill both the complainant and his father. Initially, FIR No.261 was lodged under Sections 323, 34 and 506 IPC on 21.09.2019 at 4.41 a.m and four days later i.e on 25.09.2019, after the death of the father of the complainant, Sections 325 and 302 IPC were added. The petitioner was arrested on 01.10.2019 and is in custody since then.

Learned counsel for the petitioner has argued by placing reliance upon Section 12 of the Act that the petitioner being a juvenile, is entitled to bail as a matter of right. It has been urged by the counsel that there was a delay of 12 hours in the registration of FIR and that no specific role has been attributed to the petitioner and the name of petitioner has been mentioned in the FIR because he was a family member of the alleged aggressors. It has been submitted that the petitioner was a student and his studies have been disrupted as a result of his arrest. The grandfather of the petitioner has undertaken that the petitioner will maintain good conduct in future.

Opposing the petition, learned counsel for the State has argued that the attack by the petitioner and his family members has resulted in a death. An iron pipe was recovered at the instance of the petitioner. He has submitted that the offence being grave in nature, the petitioner was not

entitled to the concession of bail.

I have considered the rival submissions.

There is no dispute about the fact that the petitioner was 15 years and 09 months of age on the date of the alleged incident. This is fortified from the 10th Class certificate dated 04.06.2019 (Annexure P-1) issued by the Board of School Education, Haryana, which reflects the date of birth of the petitioner as 01.12.2003. The certificate shows that the petitioner had appeared as a regular student in the Secondary Examination held in March 2019 which he had cleared by scoring 272 marks out of 500 marks.

The petitioner is less than 16 years of age on the date of occurrence. His bail application has been filed under Section 12 of the Act, which is reproduced as under:-

“ 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 subsection (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 subsection (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 fulfill 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.”

An examination of Section 12 shows that grant of bail to a juvenile is the rule. Bail to a juvenile can be declined only in case his release is likely to bring him in association with known-criminals or expose him to moral, physical or physiological danger or where his release would defeat the ends of justice. Gravity or nature of the offence is not a relevant consideration which has to be taken into account at the time of decision of the application of the juvenile for grant of bail. Furthermore, under Section 3(i) of the Act, a presumption of innocence of any malafide or criminal intent arises in favour of the juvenile.

This Court in **CRR No.725 of 2019 titled as Kishan Kumar Vs. State of Haryana, decided on 08.01.2020** held that a juvenile is entitled to bail as a matter of right in accordance with Section 12 of the Act unless the case falls in the exceptions carved out in the provision itself. Nothing could be referred to by the State-respondent to show that if enlarged on bail the juvenile would be exposed to moral, physical or physiological danger or would come in contact with known-criminals. Mere apprehension of the prosecution without any basis would not be a sufficient ground to decline the bail to the juvenile.

The petitioner has spent more than 07 months in incarceration. The maximum period which can be ordered to be spent by a juvenile in special home under Section 18(1)(f) of the Act is three years. From the

certificate (Annexure P-1), it is apparent that he cleared the Secondary School Examination merely three months before the alleged incident, therefore, further detention of the petitioner would mar his future education and prospects in life.

As a sequel to the above discussion, the revision petition is accepted and the impugned order dated 04.02.2020 passed by the Principal Magistrate, Juvenile Justice Board, Rohtak and order dated 06.03.2020 passed by Additional Sessions Judge, Rohtak 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 his furnishing bail bonds/surety bonds to the satisfaction of the learned trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.

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

(SUVIR SEHGAL)
JUDGE

May 27, 2020
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No