

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Sr. No.204

CRR-977-2020 (O&M)
Date of decision : 17.7.2020

Vijay Kumar

..... Petitioner

VERSUS

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Gourav Goel, Advocate, for the petitioner.

Ms. Bhavna Gupta, DAG, Punjab.

Mr. Vikrampreet Arora, Advocate, for the complainant.

SUDHIR MITTAL, J. (Oral)

The petitioner is a juvenile aged about 15 years. He is an accused in case FIR No.17 dated 5.2.2020, registered at Police Station, Bassi Pathana, District Fatehgarh Sahib, under Sections 302 and 34 IPC. According to the FIR, the petitioner himself disclosed to his employer that he and his brother had killed the deceased. Being a minor, the case of the petitioner was referred to the Juvenile Justice Board, Fatehgarh Sahib.

Vide order dated 7.4.2020, bail application of the petitioner was declined on the ground that his release would expose him to moral, physical or psychological danger as the deceased was his cousin and the family members of deceased are residing near the house of the petitioner. Appeal against the said order has been dismissed vide order dated 20.6.2020 by accepting the conclusion arrived at by the Juvenile Justice Board and additionally, on the ground that his release would defeat the ends of justice.

Learned counsel for the petitioner submits that the petitioner has been in custody since 6.2.2020. The challan already stands presented, but examination of PWs has not yet started. The petitioner has been in custody for more than five months and the trial is not likely to be concluded at an early date. On merits, reference has been made to ground No.5(ii) of the grounds of appeal to contend that the residence of the deceased and that of the petitioner is 50 kilometers apart. The FIR also shows that the deceased and the petitioner are residents of different villages. Thus, the finding of the Courts below that his release on bail would expose him to moral, physical or psychological danger is without any basis. A juvenile is entitled to bail as a matter of right and the same can only be curtailed, if there is evidence on record to conclude that (a) a juvenile is likely to come in contact with criminals, (b) he is likely to be subjected to moral, physical or psychological danger or (c) release would defeat the ends of justice. There is no evidence on record that the case of the petitioner falls in any of the exceptions and the observations to the contrary by the Courts below is conjectural.

Learned counsel for the State as well as the learned counsel for the complainant support the orders of the Courts below. They both refer to the orders of the appellate Court as well as that of the Juvenile Justice Board to submit that the family of the deceased and the petitioner are residing in close vicinity.

A perusal of Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short 'the Act') leaves no manner of doubt that a juvenile is entitled to bail as a matter of right. This right can be

curtailed only if, the case of a juvenile falls within the exceptions mentioned in the proviso to Section 12 of the Act. For a case to fall within the exceptions, there must be sufficient credible evidence available on the record. This evidence could be in the nature of statements recorded under Section 161 Cr.P.C or a report of the investigating agency or such other similar evidence. This is not to say that there must be hard evidence available regarding existence of any of the exceptions as such hard evidence cannot be expected at an early stage. However, the evidence available should be such as to convince a judicial mind regarding the existence of any of the exceptions.

In the appeal filed against the order of Juvenile Justice Board, a specific ground has been taken that the petitioner and his family reside at a distance of 50 kilometers from the family of the deceased. This is corroborated by the addresses of the parties mentioned in the FIR. The petitioner and the deceased are residents of different villages. Thus, the finding of the Courts below that the petitioner might be subjected to physical danger from the family of the deceased is purely conjectural. The said finding has been returned only to bring the case of the petitioner within the exceptions and cannot be accepted. The further finding of the appellate Court that grant of bail would defeat the ends of justice falls in the same category as no justification at all has been given for returning such a finding.

Keeping in view the facts and circumstances of this case, I deem it appropriate to allow this petition. Accordingly, the petition is allowed and the impugned orders passed by the Courts below are set aside. The petitioner is ordered to be released on bail on his furnishing bail and surety bonds to the satisfaction of the Juvenile Justice Board/Duty Magistrate, concerned.

(SUDHIR MITTAL)
JUDGE

17.7.2020
Ramandeep Singh
Whether speaking / reasoned
Whether Reportable

Yes / No
Yes/ No