

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

**CRM-M-26288-2020
Date of Decision : 16.10.2020**

Harpreet Singh @ Happy

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : None for the petitioner.

Mr. Sukhbeer Singh, Asstt. A.G., Punjab
for the respondent-State.

ARUN KUMAR TYAGI, J. (Oral)

(The case has been taken up for hearing through video conferencing.)

The petitioner has filed the present petition under Section 439 of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C.') for grant of regular bail to the petitioner in case FIR No. 163 dated 31.05.2020 registered under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act') in Police Station Sultanpur Lodhi, District Kapurthala.

Briefly stated, the facts relevant for disposal of the present petition are that on 31.05.2020 the police party headed by ASI Gurdeep Singh present in the area of village Toti noticed the petitioner coming from the side of village Toti and on seeing the police party, the petitioner took out one plastic bag with his right hand from the pocket of his pant, shifted the same from his right hand to left hand and in the course of shifting threw the bag in the bushes on the left side of the road. On

suspicion the petitioner was apprehended and on search the plastic bag was found to contain heroin weighing 270 grams. Pursuant to registration of FIR the police investigated the case. Since the petitioner was declared to be juvenile, proceedings were taken before the Juvenile Justice Board, Kapurthala. The petitioner filed application for grant of regular bail before the Juvenile Justice Board, Kapurthala which was dismissed vide order dated 13.08.2020 by the Principal Magistrate, Juvenile Justice Board, Kapurthala on the ground that allegations against the petitioner are very serious in nature. If the petitioner is released on bail then it will not serve the purpose of justice, rather he may fall in the company of anti-social elements. Thereupon, the petitioner has filed the present petition for grant of regular bail.

The petition has been opposed by the learned State Counsel in terms of reply filed by way of affidavit of Sarwan Singh Bal, PPS, Deputy Superintendent of Police, Sub-Division Sultanpur Lodhi, District Kapurthala.

I have heard learned Counsel for the petitioner and learned State Counsel and gone through the record.

Learned Counsel for the petitioner has submitted that the petitioner has been falsely implicated in the case. There was non-compliance of the mandatory provisions of the NDPS Act. No independent witness was joined at the time of alleged recovery. In view of the provisions of Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short 'the JJ Act') the petitioner being a juvenile was required to be dealt with by adopting reformatory approach and the matter of grant of bail was required to be considered in

view of the provisions of Section 12 of the JJ Act. The rigors of Section 37(1)(b) of the NDPS Act are not applicable qua the petitioner as Section 12 of the JJ Act overrides the same. Inquiry is likely to take long time. Prolonged detention of the petitioner in Observation Home will bring him in association with other juveniles in conflict with law which will not be in the best interest of the petitioner. On release of the petitioner on bail, his parents will take care of him for ensuring that he is not exposed to any moral, physical or psychological danger and does not come in association with any known criminal. Therefore the petitioner may be ordered to be released on bail. In support of his arguments, learned Counsel for the petitioner has placed reliance on judgments in **Praveen Kumar Maurya Vs. State of U.P. (Allahabad HC) : 2011 (7) R.C.R. (Criminal) 2043; Gopu Dlaiah Vs. State of A.P., (A.P.HC) : 2002 (1) R.C.R. (Criminal) 660; Matadin Vs. State of M.P. (MPHC) : 1994(3) Crimes 510 and CRM-M No. 8805 of 2015 titled as 'Ranjeet Kumar Vs. State of Haryana' decided by this Court on 29.06.2015.**

On the other hand, learned State Counsel has argued that the petitioner was found to be in conscious possession of 270 grams of heroin falling in the category of commercial quantity. Release of the petitioner on bail will expose him to moral, physical or psychological danger and bring him in association with known criminals and defeat the ends of justice. Learned Principal Juvenile Justice Board, Kapurthala has rightly declined bail to the petitioner. The petitioner does not deserve grant of regular bail and the petition may be dismissed.

The JJ Act was enacted to consolidate and amend the law relating to children alleged and found to be in conflict with law and

children in need of care and protection by catering to their basic needs through proper care, protection, development, treatment, social re-integration, by adopting a child-friendly approach in the adjudication and disposal of matters in the best interest of children and for their rehabilitation through processes provided, and institutions and bodies established.

Section 12 of the JJ Act, which deals with the matter of grant of bail to a person who is apparently a child alleged to be in conflict with law, reads 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 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 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 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.”

In the present case the petitioner, who is a juvenile, was apprehended on suspicion and on search 270 grams of heroin was recovered from the plastic bag thrown by him in the bushes on seeing the police party. The questions as to non-compliance of the mandatory provisions of the NDPS Act and not joining of independent witness are involved. In view of the non-obstante clause in Section 12 of the JJ Act, the rigors of Section 37 (1)(b) of the NDPS Act are not applicable to the case of the petitioner. Reference in support of this view may be made to judgments of this Court in ***Gurbaj Singh alias Baja Vs. State of Haryana : 2007 (3) R.C.R. (Criminal) 398*** and ***CRR-873-2011 titled as 'Mehboob Vs. State of Punjab' decided on 09.05.2011***. The nature of the offence is not one of the factors on which bail may be granted or refused to the juvenile in conflict with law and, therefore, bail cannot be denied to a juvenile in conflict with law on the ground of gravity of the offence involved. Section 12 of the JJ Act requires bail to be mandatorily granted to the juvenile in conflict with law and grant of bail to the juvenile in conflict with law is the rule and denial an exception. Bail can be denied to a juvenile in conflict with law only where there

appear reasonable grounds for believing that the release of the juvenile in conflict with law on bail is likely to bring him in association with any known criminal or expose him to moral, physical or psychological danger or his release would defeat the ends of justice. For judicial precedents in this regard reference may be made to ***Mast. Dharmabir Singh Vs. State, NCT of Delhi (Delhi High Court): 2007(10) R.C.R. (Criminal) 328; Pankaj Vs. State of Haryana (PHHC) 2013(7) R.C.R. (Criminal) 1105; Praveen Vs. State of Rajasthan (Rajasthan High Court) : 2015(7) R.C.R. (Criminal) 22; Satbir Vs. State of Haryana (PHHC) : 2011(2) R.C.R. (Criminal) 621; Shiv Kumar @ Sadhu Vs. State of U.P. (Allahabad High Court) : 2011(8) R.C.R. (Criminal) 1346 and CRR-808-2020 titled as 'Sahil @ Nannu Vs. State of Haryana' decided by this Court on 09.06.2020.*** The Juvenile Justice Board has to record the reasons for denying the bail and circumstances that led to such a decision.

In the present case, learned Principal Magistrate, Juvenile Justice Board, Kapurthala dismissed the application of the petitioner for grant of bail on the ground that allegations made against the petitioner are very serious in nature and that if the petitioner is released on bail then it will not serve the ends of justice, rather he may fall in the company of anti-social elements. The petitioner has filed present petition under Section 439 of the Cr.P.C., instead of availing of the remedy of filing of appeal before learned Sessions Judge, Kapurthala against the order passed by learned Principal Magistrate, Juvenile Justice Board, Kapurthala and thereafter filing of revision petition before this Court in case of dismissal of his appeal. However, not availing of such

alternative remedy does not bar independent statutory remedy of filing of petition under Section 439 of the Cr.P.C. In **CRM-M-32175-2017 titled as 'Arun Kumar Vs. State of Punjab' decided on 05.09.2017** and **CRM-M-603-2018 titled as 'Baljinder Singh @ Bittu Vs. State of Punjab' decided on 15.03.2018** bail was granted to juveniles by this Court on petitions filed under Section 439 of the Cr.P.C. in cases under the NDPS Act. In the present case bail could not be denied to the petitioner on the ground of allegations against him being of very serious nature. Bail could be denied to the petitioner only on the grounds specified in Section 12 of the JJ Act. Learned Principal Magistrate, Juvenile Justice Board, Kapurthala merely observed that if the petitioner is released on bail then it will not serve the ends of justice, rather he may fall in the company of anti-social elements and did not mention whether there were reasonable grounds for believing that the release of the petitioner on bail is likely to bring him in association with any known criminal or expose him to moral, physical or psychological danger or his release would defeat the ends of justice and did not also refer to any material in support of his decision. Mere alleged recovery of contraband from possession of the petitioner did not by itself furnish reasonable grounds for such belief. The respondent-State has also not produced any material before this Court to furnish reasonable grounds to believe that the release of the petitioner on bail is likely to bring him in association with any known criminal or expose him to moral, physical or psychological danger or his release would defeat the ends of justice.

In view of the above referred judicial precedents and the facts and circumstances of the case particularly in the absence of any

material furnishing reasonable grounds for belief as to existence of any of the grounds specified in Section 12 of the JJ Act for denial of bail, the petitioner is entitled to grant of regular bail and learned Principal Magistrate, Juvenile Justice Board, Kapurthala has wrongly declined bail to the petitioner vide impugned order dated 13.08.2020.

Accordingly, the petition is allowed and the petitioner is ordered to be released on bail on furnishing of personal bond through his father with bond of one surety to the satisfaction of the learned Principal Magistrate, Juvenile Justice Board, Kapurthala subject to the following conditions:-

1. the father shall take care of the petitioner and make provisions for providing of formal/informal vocational training to him to enable him to secure gainful employment on attaining of majority by him;
2. the father shall also take care that the petitioner does not come in association with any known criminal or a person of doubtful character/criminal nature and is not exposed to any physical, moral and psychological danger;
3. the father shall also take care that the petitioner does not himself consume any narcotic drug or psychotropic substance and does not commit any other offence under the NDPS Act after his release on bail; and
4. the Probation Officer/Child Welfare Officer, Kapurthala shall visit the petitioner once every month

for ascertaining his well being, counseling and guiding him.

In case of commission of any other offence under the NDPS Act by the petitioner, bail granted to the petitioner shall be liable to be cancelled by the Principal Magistrate, Juvenile Justice Board, Kapurthala on application to be filed by the prosecution for this purpose.

16.10.2020

Kothiwal

(ARUN KUMAR TYAGI)
JUDGE

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