

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

201

CRR-1645-2019

Vikram @ Vicky @ Gonder aged 17 years through his father Mainpal

... Petitioner

Versus

State of Haryana

... Respondent

CRM-M-48242-2019

Amit @ Ganja @ Sachin aged 17 years through his father Shri Suresh

... Petitioner

Versus

State of Haryana

... Respondent

Decided on : 24.09.2020

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present: Mr. Rahul Jaswal, Advocate for the petitioner
in CRR-1645-2019.

Mr. J.C. Malik, Advocate for the petitioner
in CRM-M-48242-2019.

Mr. Anant Kataria, DAG, Haryana.

(The proceedings are being conducted through
video conferencing, as per instructions.)

G.S. Sandhawalia, J. (Oral)

The present order shall dispose off CRR-1645-2019 and CRM-M-48242-2019, as the FIR is common in both cases.

The petitioners herein seek the benefit of regular bail in FIR No.679 dated 20.10.2018 under Sections 302, 404, 34 of IPC, registered at Police Station Smalkha, District Panipat.

In CRR-1645-2019, the petitioner Vikram @ Vicky @ Gonder seeks the benefit of regular bail on account of the fact that his regular bail application has been dismissed by the Juvenile Justice Board, Panipat on 29.03.2019 (Annexure P-1) and the said order was upheld in appeal on 08.05.2019 on the ground that the preliminary assessment report of the Psychologist of appellant was awaited whether the Juvenile Justice Board would conduct the trial or commit the trial before the Childrens Court. Resultantly, it was held that the applicant would come in the association with the criminals and releasing him on bail would further indulge him to commit more crime. Thus, his appeal has been dismissed by declining his prayer for regular bail.

On 29.07.2019, the Principle Magistrate Juvenile Justice Board, Panipat (PMJJB) came to the conclusion that the accused Amit @ Ganja @ Sachin was 16 years 6 months 15 days old on the date of incident and, therefore, he has to be treated as an adult for the purpose of trial and was ordered to be produced before the Special Court, Panipat.

In CRM-M-48242-2019, the prayer for bail of Amit @ Ganja @ Sachin was declined by the Additional Sessions Judge, Panipat on 26.08.2019 on the ground that on his arrest on 09.11.2018, on the basis of disclosure statement of the co-accused, he had got recovered the Gold Chain of the deceased and blood stained clothes. Though he had not been named in the FIR, the allegations against him were that he had inflicted injuries upon the head and body of the deceased with interlocking tiles, resulting in his death at the spot.

The FIR was lodged by the complainant Samar Singh father of the deceased Ravinder, who had stated that since the deceased was involved in finance business and had not come back to the village Kiwana by 8:00 PM, he had gone to search for him on the evening of 19.10.2018 to Samalkha alongwith one Vijaypal, friend of the deceased. The said person had told him his son had been meeting with Pankaj Balmiki resident of Samalkha at his shop on Chulkana Road near Krishna Colony. When they had reached there, they had heard the noise of the deceased calling '*Maar Diya, Maar Diya*'. In the street light 4 boys were seen causing injuries to Ravinder on his mouth and head with the interlocking tiles. The boys were named as Jaibir @ Zebra son of Satpal, Vicky @ Gonder son of Maina, Dhola @ Secretary@ Azad son of unknown, Monu @ MC son of Devi, all residents of Chulkana.

The said persons were stated to be known and identified by Vijaypal. The boys had fled away on the Scooty of the deceased and on a motorcycle. The complainant had found that a Gold Chain worn by the deceased was also missing and resultantly prayed for legal action.

Mr. J.C. Malik, appearing for the petitioner Amit @ Ganja @ Sachin, submits that the petitioner was not even named by the father in the FIR as such and thereafter the complainant had also been examined in the Court on 28.01.2020 trying the co-accused Jaibir @ Zebra and then also had not named the applicant-petitioner.

A perusal of the said statement which was placed on record on 17.09.2020 would also go on to show that the complainant had also

obtained a video footage from the CCTV Cameras installed near the spot, which were handed over to the police by converting the same in a Pen-Drive. The Trial Court trying the case of Jaibir @ Zebra had also played the Pen-Drive, which the complainant had produced and observed that the faces of the assailants and the identity of the vehicles is not visible, though the incident is visible. The complainant also identified Jaibir as one of the persons present in the Court out of the 4 assailants and stated that Vikram @ Vicky was facing trial as a juvenile. Accused Azad @ Dhola and Monu @ MC having been arrested by the police and having been declared innocent, an application under Section 319 Cr.P.C., had also been moved by the complainant and further examination of the complainant as such was deferred.

Thus, it is apparent that the complainant who is stated to be the eye witness has not named the petitioner Amit @ Ganja @ Sachin in his deposition before the Court and, therefore, the petitioner is entitled for the benefit of concession of regular bail, as he has been in custody since 09.11.2018.

Only because his disclosure statement has been made before the police on 12.11.2018, on the basis of his arrest on 09.11.2018 and the alleged recovery of Gold Chain would not be enough as such to keep him in custody in the above facts and circumstances. More so from the statement of the complainant it also transpires that he had left the deceased to inform the police, though he had been told by Chirag, who had come there, that the police had already been informed. The police

had then taken the dead body to Civil Hospital, Panipat and it was thereafter the FIR had been lodged.

It has also been pointed out from the challan/final investigation report that the police had searched the dead body of Ravinder and Aadhaar Card was found. His identity was established that he was a resident of Kiwana and his heirs were intimated and, thereafter the spot was inspected.

In such circumstances, the benefit is, thus, to be granted to Amit @ Ganja @ Sachin, as admittedly the incident had taken place late at night at a distance from the village of the complainant.

The petitioner Vikram @ Vicky @ Gonder had surrendered on 05.11.2018 and has been in custody for almost 2 years. On 21.5.2019, the Principle Magistrate Juvenile Justice Board, Panipat (PMJJB) came to the conclusion that he was 16 years 11 months 2 days old on the date of incident and, therefore, he has to be treated as an adult for the purpose of trial.

Coming to his case, it is to be noticed that as per the police proceedings itself, the identity as such was located on the basis of the Aadhaar Card and, therefore, the probability of the alleged eye witness, the father being present, is dim. The occurrence has stated to have taken place at 11:00 PM as per his own statement at Samalkha and he is a resident of village Kiwana from where he had come with Vijaypal who knew the accused, whereas he personally did not know them. Therefore, this Court *prima facie* is of the opinion that the alleged eye witness has

been introduced as such by the police as the FIR was only lodged at 4:00 PM on 20.10.2018, after a delay of 16 hours.

Accordingly, keeping in view the above discussion and keeping in view the age of both the petitioners as such was in the range of around 17 years at the time of incident, the present petitions are allowed. Accused Vikram @ Vicky @ Gonder and Amit @ Ganja @ Sachin are ordered to be released on bail on their furnishing bail bonds/surety bonds to the satisfaction of Illaqa Magistrate/Duty Magistrate, Panipat, as both of them would be above 18 years of age now.

SEPTEMBER 24, 2020

Naveen

**(G.S. SANDHAWALIA)
JUDGE**

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No