

In the High Court of Punjab and Haryana at Chandigarh

.....

CRR-1174-2020

.....

Date of decision:13.10.2020

Basu alias Golu

.....Petitioner

v.

State of Haryana

.....Respondent

....

Coram: Hon'ble Mr. Justice Ashok Kumar Verma

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Present: Mr. Jasbir Singh Dadwal, Advocate for the petitioner.

Mr. Ranbir Singh Arya, Additional Advocate General, Haryana
for respondent-State.

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Ashok Kumar Verma, J.

The case has been taken up by way of Video Conference as per instructions in view of COVID-19 pandemic.

This criminal revision petition has been filed to challenge the impugned order dated 10.09.2020 passed by the Principal Magistrate, Juvenile Justice Board, Panchkula whereby the application for grant of regular bail to the petitioner has been denied, which order was upheld on 22.09.2020 by learned Additional Sessions Judge, Panchkula. The petitioner, being juvenile, has prayed for setting aside the impugned orders passed by the Courts below.

Notice of motion.

Mr. Ranbir Singh Arya, learned Additional Advocate General, Haryana has put in appearance and accepts notice on behalf of the respondent-State.

The brief facts of the case are that the petitioner was arrested in FIR No.124/2020 dated 04.08.2020 registered for the offence under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'the Act') at Police Station Kalka, District Panchkula. The petitioner moved an application for grant of bail before Principal Magistrate, Juvenile Justice Board, Panchkula, being Juvenile but the same was dismissed. The appeal preferred by him before the Additional Sessions Judge, Panchkula was also dismissed.

As per the prosecution case, the allegation against the petitioner is that he was found in conscious possession of 12.10 Grams of Heroin. The petitioner was more than 16 years of age at the time of commission of offence.

Learned counsel for the petitioner contends that the petitioner is innocent and has nothing to do with the alleged offence; nothing has been recovered from his possession; false recovery of contraband was planted upon the petitioner. He further contends that the Principal Magistrate, Juvenile Justice Board, Panchkula has wrongly dismissed the prayer for regular bail on the sole ground that if the juvenile is ordered to be released on bail he is likely to deal with the drugs/contraband against through which he may be exposed to physical and psychological danger and his release at

an early stage would defeat the ends of justice. He lastly contends that the petitioner is a juvenile having no previous criminal history and he is in custody since 04.08.2020. The bail application of the petitioner has been dismissed by the Courts below only on the ground of presumption that in case, the juvenile is released on bail, he may be exposed to moral and psychological danger and his release would defeat the ends of justice, whereas, no such finding was recorded as to how he will come in contact with criminals and how he will be exposed to moral, physical or psychological danger, which would defeat the ends of justice. Learned counsel has further relied upon Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as 'the JJ Act') to contend that a child in conflict with law cannot be denied bail.

Learned counsel for the respondent-State opposes grant of bail to the petitioner on the ground of heinousness and seriousness of offence and also because of the fact that the victim was minor at the time of occurrence.

I have heard learned counsel for the parties and have also perused the impugned orders as well as the allegations levelled in the FIR.

According to the prosecution, the petitioner was found in conscious possession of 12.10 Grams of Heroin, which is marginally above than the small quantity. His prayer for regular bail has been rejected by the learned Principal Magistrate, Juvenile Justice Board, Panchkula on sole ground that if the petitioner is released on bail, he is likely to deal with the drugs/contraband again through which he may be exposed to physical and

physiological dangers. However, there was no such material available on record. The petitioner has been in incarceration since 04.08.2020. Due to Covid-19 pandemic the presentation of challan and commencement of trial is likely to take long time. Even the FSL report has not been received as yet. As per allegations levelled in the FIR, the petitioner was tried by Juvenile Justice Board, where, he moved an application for grant of bail, being juvenile, which was dismissed. Thereafter, an appeal filed against the said order before the Additional Sessions Judge, Panchkula was also dismissed. The petitioner has been declined bail on the ground that in case, he is released on bail, his release would defeat the ends of justice which would bring him in association with known criminals and expose him to moral, physical and psychological danger.

Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (here-in-after referred to as 'JJ Act') is relevant in the present controversy, which is reproduced as under :-

“12. Bail of juvenile.-

(1) When any person accused of a bailable or non-bailable offence, and apparently a juvenile, is arrested or detained or appears or is 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 1 [or placed under the supervision of a Probation Officer or under the care of any fit institution of fit person] but he shall not be so

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released if there appear reasonable grounds for believing that the release is likely to bring him into association with any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice.

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

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

From the bare reading of the provisions of Section 12 of the Act, it appears that the intention of the legislature is to grant bail to the juvenile irrespective of the nature or gravity of the offence, alleged to have been committed by him and the same can be declined only in case where reasonable grounds are there for believing that the release is likely to bring him into the association of any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice. Meaning thereby, as per aforesaid provision, a juvenile can be denied the concession of bail, if any of the three contingencies specified

under Section 12(1) of the JJ Act is available.

In the present case, while declining the bail application, the relevant provision has not been considered by both the Courts below as in accordance with Section 12 of the Act, the juvenile is entitled to bail as a matter of right unless the case falls in the exceptions carved out in the provision itself, but nothing was available on record to show that any of the three exceptions specified under Section 12(1) of the Act was existing.

Similar view was observed in cases **Manoj Singh vs. State of Rajasthan, 2004(2) RCC 995**, **Lal Chand vs. State of Rajasthan, 2006(1) RCC 167**, **Prakash v. State of Rajasthan, 2006(2) RCR (Criminal) 530** and **Udaibhan Singh alias Bablu Singh vs. State of Rajasthan, 2005(4) Crimes 649**.

Learned counsel for the respondent-State has also not pointed out any material available on record to show that there are reasonable grounds for believing that the petitioner is likely to come into the association of any known criminal if released on bail or his release will expose him to moral, physical or psychological danger. The petitioner is in custody since 04.08.2020 and no useful purpose will be served, in case, he is kept in custody.

Keeping in view the facts and circumstances of the case and law position as discussed above, I am of the view that both the Courts below have not satisfied the requirement of provisions of Section 12(1) of the Act and without having any material on record, the bail application of the petitioner has been declined. Hence, the impugned orders are not

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sustainable in the eyes of law and as such, are liable to be set aside.

Accordingly, the present criminal revision petition is allowed and the impugned orders i.e. order dated 10.09.2020 and order dated 22.09.2020 passed by the Courts below are hereby set aside. The petitioner is ordered to be released on bail subject to his furnishing adequate bail bond/surety bonds to the satisfaction of the Principal Magistrate, Juvenile Justice Board, Panchkula.

October 13, 2020.

(Ashok Kumar Verma)
Judge

hsp

NOTE:	Whether speaking/reasoned:	Yes/No
	Whether reportable:	Yes/No