

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

119

CRR-3413-2019

Date of Decision : 16.10.2020

Neeraj @ Dheeraj @ Kalia

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Arpandeeep Narula, Advocate
for the petitioner.

Mr. Naveen Singh Panwar, DAG, Haryana
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 revision petition under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C.') for setting aside the impugned order dated 16.11.2019 passed by learned Additional Sessions Judge, Sirsa in Criminal Appeal No.350CRA-2019 upholding order dated 07.11.2019 passed by learned Principal Magistrate, Juvenile Justice Board, Sirsa dismissing the application for grant of regular bail to the petitioner in case FIR No.537 dated 24.08.2019 registered under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act') in Police Station City Sirsa.

Briefly stated the facts giving rise to the filing of the present revision petition are that on 24.08.2019 when ASI Satnarayan along with other police officials reached near canal bridge in the area of City Sirsa

in the course of patrolling duty, the petitioner along with his co-accused Devender Kumar @ Babbu and Sonu @ Dinanath came on motorcycle which was driven by Devender Kumar @ Babbu. The petitioner and his co-accused were apprehended on suspicion and on search 6 boxes having 60 stripes of capsules totaling 1800 containing Tramadol (weighing 1155.6 grams) and currency notes totaling Rs.9,000/- were recovered from the plastic bag kept on the right knee of co-accused Sonu @ Dinanath. On completion of investigation, challan was filed against the petitioner and his co-accused. Due to the petitioner being juvenile separate proceedings were initiated against him before the Juvenile Justice Board, Sirsa. The petitioner filed application for grant of regular bail which was dismissed by learned Principal Magistrate, Juvenile Justice Board, Sirsa vide order dated 07.11.2019 on the ground that his release on bail will expose him to moral, physical or psychological danger and will defeat the ends of justice and will bring him into association with persons of criminal nature which will be against the interest of juvenile himself. The petitioner challenged the said order by filing appeal No.350CRA-2019 which was dismissed by learned Additional Sessions Judge, Sirsa vide order dated 16.11.2019.

Feeling aggrieved, the petitioner has filed the present revision petition for setting aside the impugned orders and grant of regular bail to him.

The petition has been opposed by learned State Counsel. However, no reply has been filed by the respondent-State.

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

Learned Counsel for the petitioner has argued that the petitioner has been falsely implicated in the case. Mandatory provisions of the NDPS Act were not complied with. No recovery was made from the petitioner and the petitioner could not be said to have any knowledge and to be in conscious possession of the intoxicant capsules recovered from the plastic bag kept by his co-accused. The provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short, “the JJ Act”) have overriding effect over the provisions of the NDPS Act and in view of Section 12 of the JJ Act the rigors of Section 37(1)(b) of the NDPS Act are not applicable qua the petitioner. The learned Courts below have declined bail to the petitioner in view of gravity of the offence which is not one of the considerations provided under Section 12 of the JJ Act. There is no material available on record to show that any of the three contingencies specified under Section 12 of the JJ Act exists. No useful purpose will be served by further detention of the petitioner in Observation Home. The maternal grand parents/mother of the petitioner will take care of him after his release on bail and will ensure that he is not exposed to any moral, physical or psychological danger and does not come in association with known criminals. The impugned orders suffer from material illegality. Therefore the same may be set aside and 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 ***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; CRR-808-2020 titled as 'Sahil @ Nannu Vs. State of Haryana' decided by this Court on 09.06.2020; Writ Petition (Criminal) No.102-2007 titled as 'Re Exploitation of Children in Orphanages in the State of Tamil Nadu Vs. Union of India and others' decided by Hon'ble Supreme Court on 10.02.2020; Gurbaj Singh @ Baja Vs. State of Haryana (PHHC) : 2007(3) RCR (Criminal) 398 and CRR-873-2011 titled as 'Mehboob Vs. State of Punjab' decided by this Court on 09.05.2011.

On the other land, learned State Counsel has argued that the petitioner along with his co-accused was found to be in conscious possession of 1800 capsules containing Tramadol (weighing 1155.6 grams) falling in the category of commercial quantity. Release of the petitioner on bail will expose him to moral, physical or psychological danger, bring him into association with known criminals and will defeat the ends of justice. The impugned orders do not suffer from any illegality. Therefore 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 sub-section (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 was apprehended with co-accused Devender Kumar @ Babbu and Sonu @ Dinanath and recovery of 60 stripes of capsules totaling 1800 containing Tramadol weighing 1155.6 grams and currency notes totaling Rs.9,000/- was allegedly made from bag kept on the knee of Sonu @ Dinanath. It is a debatable question as to whether he can be said to have knowledge about the same and to be in conscious possession thereof. 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 will not be 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, Sirsa dismissed the application of the petitioner for grant of bail on the ground that his release on bail would expose him to moral, physical or psychological danger and that his release would defeat the ends of justice and he may come in association with the persons of criminal nature which would be against his interest but the learned Principal Magistrate, Juvenile Justice Board, Sirsa did not refer to any material in support of his decision. No such material was also referred to by learned Additional Sessions Judge, Sirsa and has been placed before this Court by the respondent-State. In the course of hearing today the report of the Probation Officer/Child Welfare Officer, Sirsa in respect of the petitioner has been called through e-mail from the Principal Magistrate, Juvenile Justice Board, Sirsa, print out of which is taken on record. In his report the Probation Officer/Child Welfare Officer, Sirsa has mentioned that the petitioner may be given chance to reform.

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 bail and the impugned orders of the Courts below declining bail to the petitioner suffer from material illegality and are liable to be set aside.

Accordingly, the revision petition is allowed and the impugned orders are set aside and the petitioner is ordered to be released on bail on furnishing of personal bond through his maternal grand-mother/mother with bond of one surety to the satisfaction of the learned Principal Magistrate, Juvenile Justice Board, Sirsa subject to the following conditions:-

1. the maternal grand-mother/mother 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 maternal grand-mother/mother 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 maternal grand-mother/mother 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, Sirsa 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, Sirsa on application to be filed by the prosecution for this purpose.

16.10.2020
vinod/kavneet singh/vinay

(ARUN KUMAR TYAGI)
JUDGE

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