

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

CRM-M No.10521 of 2021

Date of Decision: 29.04.2021

Harwinderjit Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. Sangram S. Saron, Advocate,
for the petitioner

Mr. Sandeep Kumar, Deputy Advocate General, Punjab
for the respondent-State.

SUDIP AHLUWALIA J.

The instant petition has been filed under Section 439 of the Code of Criminal Procedure seeking regular bail on behalf of the petitioner in case FIR No.21 dated 22nd March, 2020, registered under Sections 302, 397 and 201 of the Indian Penal Code, 1860 at Police Station Sadar Nawanshahr, District SBS Nagar, after such bail was declined by the Ld. Addl. Sessions Judge, SBS Nagar on 29.01.2021 vide his impugned order Annexure P-6.

[2] Background of the matter is that FIR No. 21, dated 22.03.2020 was registered under Sections 304-A, 279 IPC at PS, Sadar Nawanshahr against unknown persons on the statement of

one Darbara Singh son of Dhanna Singh, resident of Balachaur, District SBS Nagar. Later on, Jagdeep Singh @ Babbu Bajwa and Harsh were arrested in case FIR No. 47, dated 11.05.2020, under Sections 302/397 IPC, PS Rahon and in the said FIR, Jagdeep Singh @ Babbu Bajwa and Harsh suffered confessional statements admitting that they alongwith Harwinder Singh and Hardeep Singh @ Dipi have constituted a gang. They used to commit robbery by inflicting injuries. In the same way, they have also committed robbery by inflicting injuries on one Jasvir Singh. On the basis of said disclosure statements, applicant and others were nominated in FIR No. 21, dated 22.03.2020, PS, Sadar Nawanshahr and offences under Sections 302/397/201 IPC were added after deleting Sections 279/304-A IPC.

[3] Ld. Counsel for the Petitioner has argued that his client was a juvenile on the date of the alleged occurrence (21.03.2020). His date of birth happens to be 25.10.2002. As such he was less than 17½ years of age on the relevant date. He, therefore, ought to have been dealt with under Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015. According to which -

'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 case 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.'

[4] The Petitioner was arrested two months after the date of occurrence on 25.05.2020. His prayer for bail was nevertheless rejected by the Ld. Addl. Sessions Judge, after he was ordered to be sent up for trial along with co-accused Hardeep Singh @ Dipi

before the Children's Court/ Court of Sessions vide the order passed by the Ld. Principle Magistrate, Juvenile Justice Board, SBS Nagar on 18.12.2020 which is Annexure R-1 to the reply filed on behalf of the State.

[5] It is verified from the impugned order that the Petitioner's prayer for bail was rejected by the Ld. Court below without considering the aspect as to whether he was entitled to be covered by the beneficial provisions of Section 12 of the JJ Act already reproduced above. On the other hand, the complete reasons for which the Petitioner was denied bail by the Ld. Addl. Sessions Judge are set out below -

“10. Co-accused Jagdeep Singh @ Babbu Bajwa and Harsh, who have been nominated in aforesaid FIRs No. 21 & 47 have also confessed various incidents of snatching/ robbery. During investigation of present case, it has been revealed that the applicant Harwinderjit Singh @ Hunny, Jagdeep Singh @ Babbu Bajwa and Harsh have constituted a gang. They have committed robbery by inflicting injuries to Jasvir Singh, deceased in the present case. According to post mortem report of deceased Jasvir Singh, injuries on his person have been reported to be incised wounds.

11. There are serious allegations against the applicant. Keeping in view the gravity of the offence and nature of the crime, without commenting on merit

of the case, applicant is not entitled to bail. Accordingly, present bail application stands dismissed. Bail application file be attached with the main file, pending for 02.02.2021.”

[6] Ld. Counsel for the Petitioner from his side has placed reliance upon a decision of the Delhi High Court in **A.C. Vs. State of NCT of Delhi, Bail Application No. 657 of 2019** rendered on 28.03.2019, in which it was observed *inter alia* :

“11. But the Additional Public Prosecutor fairly conceded that there is no provision in JJ Act, 2015 requiring a departure to be made from the general provision contained in Section 12 quoted above in the matter of release on bail of a CCL who has been referred to be tried as an adult. To put it simply, the above referred provision of Section 12 governs the field for all children in conflict with law, irrespective of the age bracket to which they belong, and notwithstanding the fact as to whether the case against them is being inquired into by the JJB or the Children's Court to which it may have been referred under Section 19(3).

12. The impugned order of the Children's Court, in above view, fails to pass the muster of Section 12 and, cannot be upheld. The relevant observations of the Children's court in denying release on bail to the petitioner have been extracted above in extenso. Having regard to the provision contained in the main clause of sub-Section (1) of Section 12, bail is the

general rule. The circumstances in which denial, by way of an exception, is to be adopted, are indicated in the proviso to the said sub-section. Pertinent to note here that the circumstances in which such person (CCL) is not to be released on bail include the existence of reasonable ground for believing that :

- (i) the release is likely to bring the CCL into association with any known criminal;*
- (ii) it would defeat the ends of justice.”*

[7] Relying on the above decision, another Bench of the Delhi High Court in ***CCL 'A' Vs. State (NCT of Delhi), Bail Application No. 2510 of 2020*** decided on 19.10.2020, had observed *inter alia* :

- “(i) xx xx xx xx*
- (ii) Section 439 Cr.P.C. has no application to the issue of grant or denial of bail to a juvenile since, again, a juvenile is to be dealt with by a special statute, namely the JJ Act, which contains a specific provision for bail, namely section 12 of the JJ Act;*
- (iii) If a juvenile has been denied bail by the JJB and/or the Children's Court, it is available for the juvenile to file an application before the High Court under section 12 of the JJ Act seeking bail; and it is not necessary that the bail plea be styled as an appeal under section 101(2) of the JJ Act. The words “.....or otherwise” appearing in 8(2) are wide enough to include any bail proceeding filed before the High*

Court, whether directly or after having been denied relief by the JJB and/or the Children's Court; and the High Court is empowered to entertain a bail plea as a proceeding of first instance, without having to treat it as an appellate or revisional proceeding;

(iv) A bail plea filed on behalf of a juvenile must always and only be considered on the criteria and parameters set-out in section 12 of the JJ Act, and the general principles for grant of denial of bail under section 437 or section 439 Cr.P.C. have no application in such a case.

(Emphasis added)

[8] Consequently, the concerned child in conflict with law was ordered to be released on bail by the Court, which observed as under :-

“51. Most importantly, the mandate of section 12 cannot be diluted, which says that a CCL-A shall be released on bail, with or without surety, or placed under the supervision of probation officer or under the case of any fit person; and accordingly, there must be good reason not to do so and such reason must relate back to the welfare of CCL-A. In the present case this court does not find any such reasons.”

[9] As already noted, the Ld. Addl. Sessions Judge in his impugned order has not at all considered entitlement of the Petitioner for bail in terms of Section 12 of the Juvenile Justice

Act, which could not have been overlooked even in the situation that he was sent up to face trial by the JJB in the Children's Court. In any case, having been a juvenile on the relevant date, he was entitled to be dealt with under Section 12 for which the grounds for denying bail to him could be within the proviso to Section 12(1) of the JJ Act as reproduced above. The first and foremost reason for refusing such bail to a juvenile/ child in conflict with law is the possibility of his coming into contact of his being brought into association with any known criminal, or otherwise his exposure to moral, physical or psychological danger or where his release would defeat the ends of justice. In the opinion of this Court, neither of these conditions appear to be attracted qua the petitioner at this stage. He is alleged to have become a member of a gang along with co-accused Jagdeep Singh @ Babbu Bajwa and Harsh, who had both crossed the age of majority at the relevant time. But as intimated by Ld. Counsel for the State, on instructions, those two adults are already in custody, and so there is little chance of the Petitioner being exposed to their association if released on bail. He has by now remained in detention for almost an year. It can therefore not be said that at this stage he is likely to be exposed to any moral, physical or psychological danger or his release would

defeat the ends of justice when the alleged offence was committed more than one year ago, and, as seen from the material collected by the Investigating Authorities which essentially is the disclosure statements of co-accused Jagdeep Singh @ Babbu Bajwa and Harsh, the fatal injuries on the deceased were inflicted by those very accused persons, and not by the present Petitioner himself. As such, clearly extending the beneficial effect of Section 12 of the JJ Act to the Petitioner who has already remained in detention for so long would not defeat the ends of justice.

[10] For the aforesaid reasons, the Petitioner at this stage is permitted to be released on bail to the satisfaction of the Ld. trial Court subject, however, to the condition that while on such bail, he shall remain under supervision of the Legal-cum-Probation Officer, District Child Protection Unit, SBS Nagar Nawanshahr, who shall maintain general oversight and supervision over him, including by visiting or calling him from time to time as may be deemed necessary, to ensure that he does not fall into any undesirable company and is not exposed to any moral, physical or psychological danger; or that his release, in any manner, defeats the ends of justice.

[11] Needless to add, nothing in this judgment shall be construed as an expression on the merits of the case as a whole.

[12] Petition stands disposed off.

29.04.2021

Satyawan

**(SUDIP AHLUWALIA)
JUDGE**

Whether speaking/reasoned:	Yes
Whether reportable	: Yes