

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

CRR-233 of 2021 (O & M)
Date of decision :02.06.2021

Vishnu

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Aditya Sanghi, Advocate
for the petitioner.

Mr. Gurmeet Singh, AAG, Haryana.

Ms. Amrita Garg, Advocate for the complainant.

SUVIR SEHGAL, J.

Petitioner, who is a child in conflict with law, has filed the instant petition through his father, challenging the orders dated 15.01.2021, Annexure P-2, whereby application for grant of bail under Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short “the Act”) has been declined by the Principal Magistrate, Juvenile Justice Board, Rohtak and order dated 02.02.2021 passed by learned Additional Sessions Judge, Rohtak whereby appeal filed against the said order has been dismissed.

Facts, in brief, are that on the basis of a complaint by Rajender, FIR No.214 dated 28.05.2020 was registered under Section 201, 302, 34 of the Indian Penal Code and Section 3 (2) (vi) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short “SC & ST Act”) on the allegation that Amit alias Neetu and the present petitioner have murdered his son Sombir. During investigation, the petitioner and the co-accused were apprehended on 28.05.2020 and they admitted their involvement in the homicide in their disclosure statement.

Counsel for the petitioner has referred to the challan and submitted that the date of birth of the petitioner as per the school leaving certificate is 27.09.2014 and being a child in conflict with law, he is entitled to be released on bail under Section 12 of the Act. He submits that there are no allegations qua the petitioner of having committed any offence under the SC & ST Act. According to him, the accusation against the petitioner is that he caught hold of the deceased and inflicted injury on him with a wooden stick. He has relied upon a judgment passed by this Court in CRR-53-2021 titled as **Vishvas vs. State of Punjab**, decided on 08.02.2021 to contend that as the Courts below have not adverted to the Social Investigation Report, the impugned orders cannot be sustained.

Opposing the petition, State counsel, who is assisted by the counsel for the complainant, upon instructions from SI Bhagat Singh submits that the petitioner inflicted the injury on the head of the deceased and a blood stained wooden stick as well as a motorcycle used in the crime have been recovered from the petitioner. As per his instructions, challan has been presented on 23.07.2020, charge has been framed on 10.03.2021 and the trial is fixed for 03.06.2021 for recording of statement of prosecution

witnesses though none of the witnesses has appeared in the witness box so far. He submits that if the petitioner, is released on bail, there is a likelihood of his coming in contact with criminals. According to the respondents, an application for re-determining the age of the petitioners is pending before the Trial Court.

I have considered the rival submissions of the counsel for the parties and perused the paper book with their able assistance.

A coordinate Bench of this Court in Vishvas's case (supra) has held that application under Section 12 of the Act cannot be decided without taking into consideration of the Social Investigation Report of a juvenile, submitted by the Probation Officer as per the proforma contained in the rules framed under the Act and other materials available before the Juvenile Justice Board. This judgment was delivered after the impugned order had been passed in appeal by the Appellate Court. Though normally the matter should be remanded for fresh decision in the light of the said judgment yet the objective behind the statute has to be kept in mind which provides that a child friendly approach is required to be adopted in the adjudication and disposal of matters in the best interest of children and that the justice delivery system as available for adults is not suitable for being applied to a juvenile or a child in conflict with law. Moreover, considering the fact that the petitioner was less than 16 years of age on the date of alleged occurrence and also that he has been in custody for the last more than 01 year, this Court proceeds to examine the Social Investigation Report (Mark A).

After noticing the background of the petitioner, it has been recorded in the report that his relations with his family members, friends, teachers and classmates are cordial. As per the report, the petitioner, who is

a matriculate, comes across as a normal child. It has been further noticed that the petitioner is neither a member of any gang nor involved in drug peddling nor does he have any criminal past. The reason for the alleged offence has been given as “peer group influence” and the petitioner appears to be physically fit and mentally sound as reported by his family. The result of the report which has been submitted by the Legal-cum-Probation Officer, District Child Protection Unit, Rohtak, deserves to be noticed:-

“ *RESULT OF INQUIRY*

1. *Emotional factors* normal as per family
2. *Physical condition* fit as per family
3. *Intelligence* normal
4. *Social and economic factors* normal
5. *Suggestive cause of the problems* peership effect in a dispute
6. *Analysis of the case, including reasons/contributing factors for the offence*
7. *Opinion of experts consulted* n.a.
8. *Recommendation regarding rehabilitation by Probation Officer/Child Welfare Officer* Counselling may be required

Sd/-

*Signature of Probation Officer/Child Welfare Officer/social Worker
Legal Cum Probation Officer stamp and seal available
District Child Protection Unit
Rohtak”*

Grant of bail to a child in conflict with law is a rule and rejection of the same is an exception. Section 12 of the Act provides that notwithstanding anything contained in the Code of Criminal Procedure or in any other law for the time being in force, except for the three contingencies, specified in proviso to Section 12 (1) of the Act, the grant of bail to a child in conflict with law cannot be declined. The Courts have even gone to the

extent of holding that neither the gravity of the offence nor the fact that the co-accused are yet to be apprehended is a ground to reject the prayer. The Courts below have failed to appreciate the legal position of law which has been followed by this Court in CRR-862-2020, titled as **Vishal vs. State of Haryana** decided on 27.05.2020 and CRR-962-2020 titled as **Sanjiv vs. State of Haryana** decided on 02.07.2020.

During the course of arguments, the respondents could neither show nor refer to any material to explain as to how, in case the petitioner is enlarged on bail, would he be exposed to moral, physical or psychological danger or would come in contact of known criminals. Mere apprehension of the prosecution without there being any material on record would not be sufficient to decline the prayer for grant of bail. It may also be noticed that in case a juvenile is found guilty and convicted, the maximum period that he can be ordered to spend in a Special Home under Section 18 (1) (f) of the Act is three years. The petitioner has spent more than one year in incarceration, therefore, no purpose would be served in detaining the petitioner any further.

As a sequel to the above discussion, the revision petition is accepted, the impugned order dated 15.01.2021 passed by the Principal Magistrate, Juvenile Justice Board, Rohtak as well as order dated 02.02.2021 passed by the Additional Sessions Judge, Rohtak are hereby set aside.

Without adverting to the merits of the case at this stage, the petitioner is ordered to be released on bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Chief Judicial Magistrate/Judicial Magistrate concerned.

The father of the petitioner, who has filed the instant petition, shall regularly monitor the movement of the petitioner and ensure that he does not come in association with any known criminals and does not indulge in any other offence. He will also ensure that the petitioner is taken for counseling as has been recommended by the Probation Officer in the Report, Mark A.

02.06.2021
sheetal

(SUVIR SEHGAL)
JUDGE

Whether Speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No