

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRA-S-443 of 2021
Reserved on: 04.10.2021
Date of decision : 6.10.2021

Master Bholu (Imaginary name)

Appellant

Versus

Central Bureau of Investigation

Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Kunal Dawar, Advocate for the appellant.

Mr. Sumeet Goel, Senior Advocate with
Mr. Sangram Singh, Advocate and
Mr. A. K. Ranolia, Advocate for respondent-CBI.

Mr. Anupam Singla, Advocate for the complainant.

AVNEESH JHINGAN, J

1. This criminal appeal is filed aggrieved of the order dated 22.3.2021 dismissing the application for bail in FIR No. 250 of 2017, under Section 302 IPC , Police Station Bhondsi, Gurugram with RC-8(S) of 2017 under Section 302 IPC SC-3, Lodhi Road, Delhi.

2. The facts in brief as per the FIR are that on 8.9.2017, father of Prince left Prince and his sister in Ryan International School, Bhondsi at around 8.00 AM. At 8.10 AM, he received a telephonic call from the school staff that Prince was profusely bleeding and taken to Badshahpur Hospital,

He had received a cut on his neck. Later, he was told that Prince was taken to Artemis Hospital. Ultimately, the child died due to injury on his neck.

During investigation by Haryana Police, one Ashok Kumar was arrested. Later on 22.9.2017, investigation of the case was handed over to Central Bureau of Investigation (for short, 'CBI'). The case was re-registered. CBI arrested the appellant and produced him before Principal Magistrate, Juvenile Justice Board (hereinafter referred to as 'JJB') on 7.11.2017. The appellant was student of 11th standard in the same school. His age was sixteen years and five months on the date of occurrence. JJB made a preliminary assessment under Section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short, 'the Act') and vide order dated 20.12.2017 held that the juvenile in conflict with law (appellant) is to be tried as an adult under the Act. The order was challenged in appeal. The appeal was dismissed on 21.5.2018. Further criminal revision was preferred. This Court vide order dated 11.10.2018 remanded the matter back to JJB to conduct fresh preliminary assessment. The order of this Court was challenged by the complainant by filing SLP No. 10123 of 2018. Vide order dated 19.11.2018, the Supreme Court directed to maintain *status quo* in the matter. An application for regular bail was made before the JJB, the same was rejected on 30.10.2018. Appeal against the rejection order was dismissed on 5.11.2018. Criminal Revision No. 3838 of 2018 was filed, same was dismissed on 30.6.2020 by this Court. The SLP preferred against the order of this Court was dismissed on 2.9.2020. The order dated 2.9.2020 was modified by order dated 29.10.2020. The word “tried” was substituted with the word “treated”. Fresh bail application was filed on

25.2.2021 before the Additional Sessions Judge, Gurugram. The same was dismissed on 22.3.2021. The operational paragraph of the impugned order is reproduced below:

“21. As an inference of the above discussion, this court is having a view that the instant bail application is neither maintainable before this court, nor any other ground has been made out to consider such request of granting bail. Even the inquiry, whether the applicant should be treated by Juvenile Justice Board as juvenile, or whether he should be tried as an adult, has still not been concluded and the same is stayed under the orders passed by the Hon'ble Supreme Court dated 19.11.2018 in SLP No. 10123 of 2018. In such circumstances, the application for bail filed by the applicant is hereby dismissed. The other authorities cited by the learned counsel appearing for the applicant/juvenile in conflict with law are not applicable here as his application for bail have already been considered and dismissed on merits up to the Hon'ble Highest Court of this country and no such change in circumstance has been shown to be made out before this court, making him entitled to concession of bail.”

3. Aggrieved of the impugned order, the present appeal is filed.
4. Before proceeding further, it would be appropriate to reproduce the relevant portion of orders passed by this Court and the Supreme Court.
5. On 19.11.2018, in the SLP filed challenging the remand by the High Court to JJB to conduct fresh preliminary assessment, the Supreme Court passed the following interim order:

“Status quo, as on today, shall be maintained by the parties in the meantime.”

6. This Court dismissed the criminal revision against dismissal of the bail application vide order dated 30.6.2020. The operational part of the order is quoted below:

“After hearing the learned counsel for the parties, I find no ground to grant the concession of bail to the petitioner for the following reasons:

(a) Though it is well settled principle of law that an application for bail filed by a person who is above of 16 years of age and is alleged to have committed a heinous crime as per Section 2 933) of the Act, pending preliminary assessment by the Board, can be allowed however, this Court is not inclined to grant any relief to the petitioner, in view of the order dated 28.02.2019 passed by the Hon'ble Supreme Court, directing that for deciding the bail application, the petitioner be treated as an “Adult”, therefore, there is little scope for this Court to find out whether the petitioner can be granted the relief under Section 12 of the Act.

(b) The Board and the Appellate Court have passed a detailed order declining the concession of bail to the petitioner in view of the proviso to Section 12(1) of the Act and this Court find no reason to form a different opinion.

(c) The arguments raised by learned senior counsel for the petitioner that the petitioner is not kept in a congenial atmosphere at Children's Home and is facing medical problem, are not proved from the two reports of the Medical Board stating that the petitioner is not facing any serious problem/illness and rather it is

noticed that the petitioner is gaining weight.

(d) The delay in disposal of the trial on account of the pendency of bail/revision/SLP before the Higher Courts, wherein status quo has been ordered on 19.11.2018, cannot be taken as a ground to grant the concession of bail to the petitioner.

(e) The prosecution has cited certain witnesses, who are minors including the sister of the deceased and therefore, possibility of tampering the evidence, cannot be ruled out, at this stage in view of the totality of circumstances and the affidavit filed by the CBI.

In view of what has been discussed hereinabove, finding no merit, this revision petition is dismissed, accordingly. Nothing observed in this order or in the orders of the Courts below shall have any bearing on the merits of the case.”

7. The SLP against the dismissal of the criminal revision was dismissed on 2.9.2020. The order is reproduced below:

“We have heard learned counsel for all parties exhaustively including learned counsel appearing on behalf of the complainant. Since the petitioner is now being tried for the purposes of bail only as an adult, we see no reason to interfere with the impugned judgment of the High Court at this stage.

Accordingly, the Special Leave Petition is dismissed.

Pending applications stand disposed of.”

8. The order passed in the SLP on 2.9.2020 was modified on 29.10.2020. The same is quoted below:

“Our order dated 2.9.2020 is modified by deleting the word 'tried' and substituting the word with 'treated'.”

9. Learned counsel for the appellant argues that fresh bail

application was filed as custody of appellant was of three years and eleven months, he was arrested on 7.11.2017. The contention is that in case ultimately it is held that the petitioner is to be treated as child in conflict with law, he has already undergone the maximum sentence he could be awarded. It is further argued that even if the prayer is considered from the angle that the appellant is to be treated as an adult, his custody period is substantial, more over as there is no progress in the trial. There are total 127 prosecution witnesses.

10. Learned senior counsel for the CBI submits that as on date, the appellant is to be treated as an adult for considering his bail application. The contention that 'if he is to be treated as child in conflict with law' is not available to the appellant in view of the interim order of the Supreme Court. He vehemently opposes the prayer for grant of bail and submits that there is no change in circumstances. In the earlier round of litigation, the rejection of bail of the appellant was tested upto the Supreme Court and there was no success. In the present case, mere custody itself cannot be a ground for grant of bail. He relies upon the contents of Annexure R-6 with the reply i.e. the reply filed before the Additional Sessions Judge, Gurugram especially paragraph No. 27. Submission is that there was an attempt by the appellant and his father to influence not only the witnesses but to pressurize the Principal Magistrate, JJB, Gurugram. Paragraph 27 is reproduced below:

“27. That the averments in Para No-27 of the application are incorrect and hence denied and strongly objected. The Hon'ble High Court of Punjab and Haryana at Chandigarh has observed in its order CRR

3838/20-18 dated 30.6.2020 that ***“The prosecution has cited certain witnesses, who are minors including the sister of the deceased and therefore, possibility of tampering the evidence, cannot be ruled out, at this stage in view of the totality of circumstances and the affidavit filed by the CBI.”*** The order of Hon'ble High Court of Punjab and Haryana at Chandigarh in CRR 3838/2018 dated 30.6.2020 is herewith enclosed as (Annexure-5). It is further submitted that, it has come on record that the applicant/Bholu individually and through his father has tried to influence the witnesses in the instant case. The statement of the witnesses have been recorded u/s 164 Cr.P.C. before the Ld. Saket Court. It is further pertinent to mention that it has come on record that the Ld. Principal Magistrate, JJB, Gurugram was compelled by the father of the JCL/Bholu to withdraw the order passed by the Ld. JJB on 11.4.2019 vide which the JCL/Bholu was transferred from the aforesaid order as there was only one “Place of Safety” established as per the provision of Section 49 of JJC by the Haryana Government. It may be noted that on 12.4.;2019, the father of the JCL/Bholu being an advocate along with other advocates approached the Ld. Principal Magistrate, JJB, Gurugram and tried to pressurize him to withdraw the aforesaid order dated 11.4.2019. It is further submitted that the Ld. Principal Magistrate, JJB, Gurugram did not bent upon the aforesaid pressure and vide order dated 12.4.2019 recorded as under:

“I was astonished to see that they were trying to influence me to change my order by exercising power under Section 104 of the Juvenile Justice (Care and Protection of Children) Act, 2015. They were pressurizing me not to shift the

juvenile Bholu to the place of Safety Madhuban, from the Observation Home, Faridabad. They were bent upon to influence me to recall the order dated 11.04.2019 on the ground that the Board has ample powers to amend its own orders. When the undersigned refused to accede to their unlawful demand and request them to approach the State Government to designate a place of safety of their choice at the place nearer to the house of Bholu or to challenge the order, they went away but the tone of the father of the juvenile was threatening.

It is further submitted that, the above subjected matter was brought to the knowledge of the Hon'ble Supreme Court of India while filing the Counter Affidavit.

11. Though the complainant has not been impleaded as party, Mr. Anupam Singla, Advocate puts in appearance on behalf of the complainant. He moved an application for placing on record the reply, the same is taken on record in the interest of justice to ensure that this Court gets assistance from the complainant. He submits that the appellant and his father, who is a practising lawyer, tried to threaten and influence the Principal Magistrate, JJB. There are complaints filed that the appellant and his father tried to influence the witnesses in the present case.

12. The issue as to whether the appellant is to be tried as a child in conflict with law or an adult under the Act is *subjudice* before the Supreme Court, *status quo* was ordered to be maintained. As on date, the appellant is to be considered as an adult while considering the prayer for grant of bail.

Five points were recorded by this court in the concluding paragraph of the order dismissing the criminal revision, SLP against the decision was dismissed. One of the apprehension recorded was that certain witnesses including the sister of the deceased were minor and possibility of tampering the evidence cannot be ruled out in view of the affidavit filed by the CBI in the criminal revision.

13. The only change in circumstances argued by learned counsel for the appellant is that now the custody period of the appellant is three years and eleven months.

14. The custody period and the fact that there is no progress in the trial are relevant factors to be considered while deciding the bail application. In the present case considering the facts and circumstances in totality, the custody period and non-progress of trial cannot be the sole ground for grant of bail.

15. The ground of delay in trial is not available to the appellant at this stage. Suffice to say the issue is *subjudice* before the Supreme Court.

16. Another aspect which needs to be taken care of is that there are complaints filed by the complainant of an attempt to influence the witnesses. CBI in its reply filed has categorically stated that the appellant and his father tried to influence the witnesses and further the Principal Magistrate, JJB, Gurugram was pressurized by the father of the appellant and his colleagues to withdraw order dated 11.4.2019 transferring Master Bholu to place of safety at Madhuban. The order passed by the Principal Magistrate, JJB, Gurugram dated 12.4.2019 is reproduced below:

*“I have been compelled to take up the file today.
Niab court attached with the Board has informed me*

that some advocates including the ones mentioned above (not Ld. APP) want to meet me. I was busy with the inquiries. I thought there is some issue relating to the inquiries. There is no facility in the office of the Juvenile Justice Board to meet a panel of advocates, so, I went outside the office of the Juvenile Justice Board to meet them and to check whether they have any problem and what the problem is. There were some other advocates along with the father of the juvenile.

I was astonished to see that they were trying to influence me to change my order by exercising power under Section 104 of the Juvenile Justice Care and Protection of Children) Act, 2015. They were pressurizing me not to shift the juvenile Bholu to the Place of Safety, Madhuban, from the Observation Home, Faridabad. They were bent upon to influence me to recall the order dated 11.04.2019 on the ground that the Board has ample powers to amend its own orders. When the undersigned refused to accede to their unlawful demand and requested them to approach the State government to designate a place of safety of their choice at the place nearer to the house of Bholu or to challenge the order, they went away but the tone of the father of the juvenile was threatening.

Copy of this order be sent to Ld. District & Sessions Judge, Gurugram for information and to take necessary action, as the act is contemptuous one and it amounts to inference in the administration of justice by influencing/pressurizing a judicial officer to pass a particular order in a particular manner.”

17. Learned counsel for the appellant produced order dated 9.5.2019 where the father of the appellant tendered an unconditional

apology which was accepted by Principal Magistrate, JJB, Gurugram. Be that as it may, the apprehension that there can be an attempt to tamper the evidence or influence the witnesses in the present case cannot be said to be baseless.

18. In the circumstances mentioned above, no case is made out for grant of bail.

19. The appeal is dismissed.

[AVNEESH JHINGAN]
JUDGE

6th October, 2021
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| 1. Whether speaking/ reasoned | : | Yes |
| 2. Whether reportable | : | Yes |