

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

CRR No.562 of 2021

Date of Decision: 29-09-2021.

Rakesh

...Revisionist-Petitioner

Versus

State of Haryana

...Respondent

(Heard through Video-Conferencing)

CORAM: HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Present: Mr. Parvesh Sachdeva, Advocate,
for the revisionist-petitioner.

Mr. Gurmeet Singh, AAG, Haryana.

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MEENAKSHI I. MEHTA, J.

Feeling aggrieved by the order dated 23.02.2021 passed by learned Principal Magistrate, Juvenile Justice Board, Sirsa, rejecting the application as moved by the revisionist-petitioner (for short “the petitioner”) for seeking the relief of regular bail as well as the judgment dated 03.03.2021 handed down by learned Additional Sessions Judge, Sirsa, dismissing the Criminal Appeal preferred by him against the said order, the petitioner has moved this revision petition with the prayer to set aside the same and to grant him the afore-said relief.

2. The facts, in brief, leading to the filing of the instant revision petition, are that a criminal case was registered against the co-accused of the petitioner named Balkar Singh at Police Station Sadar, Dabwali, under

Section 22 of the Narcotic Drugs and Psychotropic Substances Act 1985 (for short “the NDPS Act”) vide the FIR bearing No.07 dated 05.01.2021, with the allegations of his having been found in possession of 6500 Tramadol hydrochloride 100 mg, Clovedol 100-SR Tablets and during his interrogation, he had allegedly suffered a disclosure statement and in pursuance thereof, the petitioner has been arrested in this case as the alleged supplier/seller of the said Tablets to him (Balkar Singh).

3. Reply filed on behalf of the respondent-State by way of the affidavit of the Deputy Superintendent of Police, Dabwali, District Sirsa, is already available on the file and the same is taken on the record.

4. I have heard learned counsel for the petitioner as well as learned State counsel in the present revision petition and have also perused the file thoroughly.

5. Learned counsel for the petitioner has contended that neither the petitioner was apprehended at the spot nor any contraband has been recovered from him and rather, he has been falsely implicated in this case merely on the basis of the disclosure statement as allegedly suffered by his said co-accused during his interrogation. To buttress his contentions, he has placed reliance upon the observations made by the Apex Court in Surinder Kumar Khanna vs. Intelligence Officer Directorate of Revenue Intelligence, Criminal Appeal No.949 of 2018 (Arising out of Special Leave Petition (Criminal) No.9816 of 2017 and by the Single Benches of this Court in Sant Lal vs. State of Haryana 2019(1) Law Herald 848; Buta Singh vs. State of Punjab CRM-M No.31559 of 2019 Decided on 30.01.2020; Gurwinder Singh @

Goldy vs. State of Punjab CRM-M No.21579 of 2021 (O&M) Decided on 03.06.2021; Sumit @ Padha vs. State of Haryana CRM-M No.17084 of 2020 (O&M) Decided On 02.09.2020; Gurbachan Singh @ Binder vs. State of Haryana CRM-M No.1730 of 2021 (O&M) Decided on 14.07.2021 and Rajwinder Singh vs. State of Punjab, 2019(3) Law Herald 2001.

6. He has, further, contended that even otherwise, while passing the impugned order as well as the judgment, both the Courts below have not appreciated the provisions as contained in Section 12(1) of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short, “the Act of 2015”) in the correct perspective and have not recorded any specific reasons as to how the case of the petitioner is covered under the proviso appended thereto and hence, the same are not legally sustainable and are liable to be set aside and the petitioner deserves to be extended the relief of regular bail. In support of his contentions, he has referred to the observations made by the Co-ordinate Benches in *Harpreet Singh @ Happy vs. State of Punjab CRM-M No.26288 of 2020 Decided on 16.10.2020; Amit Grover vs. U.T of Chandigarh CRM-M No.14103 of 2020 (O&M) Decided on 19.06.2020; Vishnu vs. State of Haryana CRR No.233 of 2021 (O&M) Decided on 02.06.2021 and Bittu vs. State of Haryana CRR No.3627 of 2013 Decided on 11.03.2014.*

7. Per-contra, learned State counsel has argued that the above-named co-accused of the petitioner has categorically identified him (petitioner) as the person who had sold the afore-mentioned contraband to him and moreover, the petitioner is also involved in another case of the

similar nature as registered at Police Station Jamsar in Rajasthan and he has also suffered a disclosure statement regarding his having been involved in the trade of the supply of the contraband along-with his brother and other co-accused who have not yet been arrested and therefore, both the Courts below have rightly observed that his release on bail is likely to again bring him in association with his said co-accused and it being so, the instant revision petition deserves dismissal.

8. As regards the contention qua the implication of the petitioner on the basis of the alleged disclosure statement of his co-accused, it is worthwhile to mention here that in Para 3 of the Reply filed on behalf of the respondent-State, it has been mentioned that the above-named co-accused of the petitioner had disclosed that he could identify the place as well as the person from where/whom he had purchased the said recovered intoxicant tablets and in Para 4 therein, the concerned DSP has categorically deposed that the petitioner was arrested on the basis of his identification by his said co-accused. Moreover, the trial proceedings, as pending before the Juvenile Justice Board, are still at the nascent stage and therefore, it would be pre-mature to adjudicate upon the said contention, at this stage, while considering and deciding the prayer of the petitioner for grant of regular bail.

9. The observations, as made by Hon'ble Supreme Court in **Surinder Kumar Khanna (supra)**, are of no avail to the petitioner to seek the relief of regular bail because the same were made while deciding a criminal appeal preferred by the appellant against his conviction as recorded by the High Court whereas, the trial proceedings are yet to be concluded in the

present case and the petitioner is seeking the relief of regular bail. Similarly, the verdicts handed down by the Co-ordinate Benches in **Sant Lal (supra)**, **Buta Singh (supra)**, **Gurwinder Singh @ Goldy (supra)**, **Sumit @ Padha (supra)**, **Gurbachan Singh @ Binder (supra)** and **Rajwinder Singh (supra)** are also of no help to the petitioner as the facts and circumstances of the instant matter are distinguishable from those of the mentioned above because in the present case, as discussed in the preceding paragraphs, the co-accused of the petitioner, besides having suffered the alleged disclosure statement, is also stated to have identified him (petitioner) as the person from whom he had purchased the said intoxicant tablets and on the basis of his identification, the petitioner was arrested in this case. Even otherwise, it has, recently, been observed by the Co-ordinate Bench in **Bachan Singh @ Kala vs. State of Haryana CRM-M No.26316 of 2021 (O&M) Decided on 26.08.2021** that “*it has to be noticed that there cannot be any settled precedent in criminal cases especially in bail matters and facts of each case are different and distinct, therefore, observations made by the Court while deciding a bail cannot be taken to be settled and binding precedent by the other Courts dealt with similar matters.*”

10. Then, as mentioned in Annexure P-2, i.e the copy of the order passed by learned Additional Sessions Judge, Sirsa on 18.02.2021, declaring the petitioner to be juvenile, his date of birth is 15.09.2003 whereas the subject FIR was registered on 05.01.2021 and he was arrested on 09.01.2021 meaning thereby that at that time, the age of the petitioner was 17 years and 04 months approximately, i.e above 16 years and just about 08 months short

of 18 years. Further, the quantity of the contraband, as allegedly recovered in the instant case, falls within the category of “commercial quantity” attracting the provisions of Section 22 (c) of the NDPS Act which provide for the punishment of rigorous imprisonment for a term which shall not be less than 10 years but which may extend to 20 years and also the fine as mentioned therein.

Section 2(33) of the Act of 2015 defines “heinous offences” as under:-

“(33) “heinous offences” includes the offences for which the minimum punishment under the Indian Penal Code (45 of 1860) or any other law for the time being in force is imprisonment for seven years or more;”

Thus, it becomes explicit that the offence alleged to have been committed in this case falls within the category of “heinous offence” as defined above.

11. It has categorically been observed by Hon'ble Supreme Court in **Gaurav Kumar @ Monu vs. State of Haryana 2015 (6) RCR (Criminal) 36,** that *“there can be a situation where the commission of an offence may be totally innocuous or emerging from a circumstance where a young boy is not aware of the consequences but in cases of rape, dacoity, murder which are heinous crimes, it is extremely difficult to conceive that the juvenile was not aware of the consequences.”* The afore-discussed facts and circumstances of this case, when tested on the touch-stone of the above-cited observations, make it explicit that the petitioner was not at all in those tender years of age when he could be presumed to be not well aware of the commission of

the alleged offence as well as its consequences. To cap it all, as mentioned in Para 8 of the Reply-cum-affidavit, he is involved in another case of the similar nature registered at Police Station Jamsar (Rajasthan) and as deposed in Para 6 therein, the petitioner had disclosed that he, along-with his brother and four more persons, had been indulging in the trade of the supply of intoxicant tablets under the cover of a Hotel and in Para 7, it has been further mentioned that his above-said four co-accused could not be arrested till date. In these circumstances, there is every likelihood of the petitioner, if released on bail, associating again with his said co-accused and indulging in the same trade/crime and it being so, his release would certainly defeat the ends of justice and would also expose him to moral, physical and psychological danger as well and therefore, the observations as made by the Co-ordinate Benches in **Harpreet Singh @ Happy (supra), Amit Grover (supra), Vishnu (supra)** and **Bittu (supra)**, do not further the cause of the petitioner at all in seeking the relief as claimed in the present petition.

12. As a sequel to the fore-going discussion, it follows that there is no illegality, infirmity, perversity or irregularity in the impugned order passed by the Principal Magistrate, Juvenile Justice Board as well as the judgment rendered by the Additional Sessions Judge so as to warrant any interference by this Court and hence, the petitioner does not deserve the relief of regular bail. Resultantly, the instant revision petition, being *sans* any merit, is hereby dismissed.

13. However, keeping in view the fact that the petitioner is in custody since 09.01.2021, the Juvenile Justice Board, Sirsa, is hereby directed

to expedite the trial of the case pending before it against him (petitioner) and decide the same preferably within a period of four months from the date of receipt of the copy of this order.

(MEENAKSHI I. MEHTA)
JUDGE

29-9-,2021.
seema

Whether speaking/reasoned?	Yes
Whether Reportable?	Yes