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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR No.1019 of 2020 (O&M)

Date of decision: 25.03.2021

Gurkirat @ Gora

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Kanwaljeet Singh, Sr. Advocate
with Mr. Ashit Malik, Advocate
for the petitioner.

Mr. Deepak Grewal, DAG, Haryana.

Mr. Partap Singh, Advocate
for the complainant.

ARVIND SINGH SANGWAN J. (Oral)

Prayer in this revision petition is for setting-aside the order dated 31.05.2020 passed by the learned Magistrate as well as the order dated 01.07.2020 passed by the Appellate Court vide which the regular bail application of the petitioner in FIR No.99 dated 14.03.2020 registered under Sections 302, 323, 341 read with Section 34 and 506 of the Indian Penal Code, 1860 (in short 'IPC') at Police Station Taraori, District Karnal was dismissed.

Brief facts of the case are that the FIR was registered on a complaint given by Lakhwinder Singh that he is doing labour work and is having two children. His son Aspi @ Happy was also doing the labour work with the complainant. About 01 year ago, Kulwinder Singh, father of the petitioner has levelled allegations on the son of the complainant that he had teased his niece and thereafter, a Panchayat

was convened and the matter was compromised but the accused were having a grudge against his son namely Aspi @ Happy. On 13.03.2020 at about 07:00 PM, his son Aspi @ Happy along with his mother Harvinder Kaur and nephew of the complainant namely Gurpreet Singh have gone to take the medicine for Harvinder Kaur on a motorcycle bearing registration No.HR-05-BC-8967 and when they reached at Sambhi turn, then Kulwinder Singh, Gurkirat @ Gora (present petitioner) along with two other persons namely Karnail Singh and Balkar Singh way-laid them and thereafter, Balkar Singh, who was having a Binda in his hand, gave blow of same on the chest of the son of complainant. Then, Kulwinder Singh gave another Binda blow on the back of the son of the complainant, Karnail Singh gave Binda blow on the chest of the son of the complainant and the petitioner – Gurkirat @ Gora gave an iron pipe blow on the chest and back of the son of the complainant. Thereafter, all the assailants ran away from the spot and the injured was taken to hospital where he was medico legally examined and later on, he had died on 14.03.2020.

Learned senior counsel for the petitioner has argued that the Date of Birth of the petitioner – Gurkirat @ Gora is '22.11.2002' and he was blow 18 years of age and, therefore, he was declared a 'Juvenile' and after submission of the report under Section 173 Cr.P.C. on 27.04.2020, he is facing the trial as per the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter to be referred to as 'the Act of 2000'). It is further submitted that while considering the application for bail of a Juvenile in conflict with law, the Court has to pass an order while keeping in mind the provisions of Section 12 of the

Act of 2000.

Learned senior counsel for the petitioner has referred to the impugned order passed by the Additional Sessions Judge, which has been passed without reference to the provisions of the Act of 2000. The operative part of the said order dated 01.07.2020, is reproduced as under:-

“7. After hearing the contentions raised by learned counsel for the parties, this court find force in the contentions raised by learned the Public Prosecutor for the respondent/state assisted by the learned counsel for the complainant. Rather there is no force in the contentions raised by learned counsel for the appellant/Juvenile in conflict with law and the same are devoid of merit and the Supra Authorities Ravi versus State of Haryana in CRR No.12145 of 2017 (O&M) decided by the Hon'ble Punjab & Haryana High Court at Chandigarh on 11.10.2017, Tarse Singh and another Vs. State of Punjab and another in CRM-M No.301 of 2013 (O&M) decided by the Hon'ble Punjab & Haryana High Court at Chandigarh on 16.09.2019 and Sahil versus State of Punjab in CRR-4616-2017 decided by the Hon'ble Punjab & Haryana High Court at Chandigarh on 22.12.2017, cited by the learned counsel for the applicant-accused are of no help to them in this case, as the same are distinguishable from the facts of the case in hand. A conjunction of these authorities with the present case reflects that the law laid down in these authorities are applicable to the peculiar situation of each individual case and are not applicable to the facts of the case involved.

8. In the present case, applicant/appellant/juvenile in conflict with law Gurkirit @ Gora is facing trial before the Principal Magistrate, Juvenile Justice Board, Karnal under sections 302, 323, 341/34 and 506 of IPC. From the perusal of the case file, it is revealed that the applicant/appellant/juvenile in conflict with law gave blow of iron pipe on the chest, legs and back of the son of the complainant. Meaning thereby that there is specific role attributed by the applicant/appellant/juvenile in conflict with law Gurkirit @ Gora, as the applicant/appellant/juvenile in conflict

with law has committed the murder of Aspi @ Happy. If the applicant/appellant/juvenile in conflict with law be released on bail, then, it may bring him in association with known criminals or expose him to moral, physical and psychological danger and his release would defeat the ends of justice. Hence, without commenting on merits of the case and keeping in view the facts and circumstances of the case, as well as gravity of the offence in the opinion of this Court, no ground for granting of concession of bail to the applicant/appellant/juvenile in conflict with law is made out and thus, the present appeal under section 101 of Juvenile Justice (Care and Protection of Children) Act, 2000 is hereby dismissed.

However, anything expressed herein above shall be construed as an expression of opinion on the merits of the case. Let a copy of this order along with lower court record be sent back to the concerned court. After due compliance, file be consigned to the record room.”

Learned senior counsel for the petitioner has further submitted that the police, during the investigation, has found two of the co-accused of petitioner namely Balkar Singh and Karnail Singh as innocent and no challan was presented against them.

Learned senior counsel for the petitioner has submitted that as per the provisions of Section 12 of the Act of 2000, the intention of the legislature is to grant bail to the juvenile irrespective of the nature or gravity of the offence, alleged to have been committed by him and the same can be declined only in case where reasonable grounds are there for believing that the release of juvenile is likely to bring him into the association of any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice.

Learned senior counsel for the petitioner has also submitted that if the Court is satisfied that the three contingencies as

per Section 12(1) of the Act of 2000, are available in favour of a *Juvenile*, the concession of bail can be granted.

It is argued that the Courts below have not recorded the satisfaction in the impugned order as per the requirement of Section 12(1) of the Act of 2000 and without having any adverse material on record, the bail application has been declined.

Learned senior counsel for the petitioner has also referred to some judgments of this Court in which similar view has been taken, however, the same are not referred to, for the sake of brevity.

Reply by way of affidavit of the Investigating Officer is on record and as per the reply, it is stated that upon verification, it was found that the petitioner as well as his father have caused injuries to the victim whereas the two persons namely Karnail Singh and Balkar Singh, named in the FIR were found innocent.

Counsel for the State has placed on record the opinion regarding cause of death of the deceased, which is reproduced as under:-

“The opinion regarding the cause of death has already been given in this case on 20.10.2020 that “the cause of death in this case are injuries and its complications”.

In our opinion, it was a case of poly-trauma having Severe Acute Respiratory Distress Syndrome and Shock with Glasgow Coma Scale E1M1V1 as reported in the hospital record and the findings noticed during autopsy and histopathological examination of viscera of deceased corroborated with the hospital record.

In our opinion, the complications due to injuries were Acute Respiratory Distress Syndrome followed by Cardiac Arrest.”

Counsel for the State has also submitted that the Date of

Birth of the petitioner as per the School Record is 22.11.2002 and Balkar Singh and Karnail Singh were found innocent as per the verification made by the police.

Counsel for the complainant, on the other hand, has argued that as per the FIR, there is an enmity between the family of the complainant and father of the petitioner Kulwinder Singh on account of teasing the daughter of Kulwinder Singh i.e. the sister of the present petitioner – Gurkirat @ Gora by the deceased Aspi @ Happy about 01 year ago, prior to the incident and the matter was compromised in the Panchayat. It is further submitted that since the petitioner is above 17 years of age, he should be treated as an “*Adult*” and therefore, his bail application be declined.

In reply, learned senior counsel for the petitioner has submitted that the observation given by the Superintendent, Place of Safety, Madhuban, Karnal, as per the report dated 03.11.2020, it is stated that the petitioner is not involved in any other case or is not convicted. Learned senior counsel for the petitioner has also placed on record the Custody Certificate of the petitioner, according to which, he is in custody for the last about 01 year and no PW has been examined so far.

After hearing the counsel for the parties, considering the fact that the petitioner is not involved in any other case; he has been declared a “*Juvenile*”; the petitioner is not facing any other criminal trial and is stated to be a student of 10+1 when the incident occurred, I find it to be a fit case where the bail can be granted to the petitioner in terms of Section 12(1) of the Act of 2000.

Accordingly, the present revision petition is ***allowed***, the dated 31.05.2020 passed by the learned Magistrate as well as the order dated 01.07.2020 passed by the Appellate Court, are set-aside and the petitioner is directed to be released on bail subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate/Illaqa Magistrate.

(ARVIND SINGH SANGWAN)
JUDGE

25.03.2021
yakub

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