

CRA-S-1318-2020

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

**CRA-S-1318-2020 (O & M)
Date of decision: 31.08.2021**

Gurpreet Singh @ Gopi

...Appellant

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present:- Mr. Naveen Sharma, Advocate,
for the appellant.

Mr. H.S.Sitta, AAG, Punjab.

HARNARESH SINGH GILL, J. (ORAL)

Case is taken up for hearing through video conferencing.

Challenge in the present appeal is to the order dated 19.08.2020 passed by the learned Judge, Special Court, Jalandhar, vide which bail application filed by the appellant, in case bearing FIR No.134 dated 12.12.2018, registered at Police Station Lambra, Jalandhar, under Section 22 of NDPS Act, has been dismissed.

Learned counsel for the appellant has contended that the learned Special Court, Jalandhar, has wrongly declined the concession of bail to the appellant despite the fact that the appellant is a juvenile-in-conflict with the law. It is further submitted that vide order dated 28.02.2019 (Annexure A-1), the Juvenile Justice Board, had merely referred the case of the appellant to the learned Sessions Judge, Jalandhar, with a request to transfer the trial to the Children's Court. The appellant was arrested in the above-noted FIR on 12.12.2018 and he is not involved in any other case, at least of a similar nature. Learned

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counsel also submits that charge was framed on 02.04.2019, but there is no headway in the trial.

On the other hand, learned State counsel has submitted that the recovery of the contraband allegedly effected from the appellant, falls under the commercial quantity; that the appellant was never declared a juvenile by the Juvenile Justice Board and rather, his case was referred to the Sessions Judge, Jalandhar, for its onwards trial by the Children's Court, vide order dated 28.02.2019 passed by the Juvenile Justice Board, Jalandhar.

I have heard the learned counsel for the parties.

As per the case of the prosecution, recovery of 250 gram intoxicant powder, containing salt 'Alprazolam', was effected from the appellant. The aforesaid recovery falls under the commercial quantity.

Learned Judge, Special Court, Jalandhar, vide order dated 19.08.2020, while recording the finding with regard to juvenility of the appellant, has noticed as under:

“8. Other plea of the learned defence counsel is that as the accused/applicant was declared Juvenile by the learned Juvenile Justice Board vide order dated 28.02.2019, as such, the accused is liable to be released from the custody being juvenile in conflict with law. Even this contention of the learned defence counsel is without any merits. I have perused the order dated 28.02.2019 passed by the Principal Magistrate, Juvenile Justice Board, Jalandhar, vide which accused was treated as an adult and thereafter, the case was transferred to the court of learned Sessions Judge, Jalandhar for trial. The Principal Magistrate, Juvenile Justice Board after taking all the precautionary measures under Section 15 of the Juvenile Justice (Care and Protection of Children) Act 2015, came to the conclusion that accused/applicant is not juvenile and rather said child is an adult. Keeping in view Section 18(3) of the Act, the Juvenile Justice Board came to the conclusion that there is need for trial of the said accused as an adult.

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Due to which this case was not retained by the Juvenile Justice Board and rather it was transferred to the court of Sessions vide order dated 28.02.2019. Order dated 28.02.2019 was never challenged by the accused by filing any revision or appeal against the said order. Meaning thereby the accused was never declared as Juvenile in conflict with law by the learned Juvenile Justice Board. When it is so, then it does not lie in the mouth of the learned defence counsel to allege that accused is juvenile. When the accused is treated as an adult, then the rigors of Section 37 of NDPS Act will apply to the present bail application.”

The appellant was never declared a juvenile by the Juvenile Justice Board and rather, his case was referred to the Sessions Judge, Jalandhar, for its onwards trial by the Children's Court, vide order dated 28.02.2019 passed by the Juvenile Justice Board, Jalandhar. When the question of juvenility stands adjudicated and such finding has attained finality, it is not open to the appellant to claim that he was a juvenile at the time of the commission of the crime.

In view of the above, I do not find any merit in the present appeal.

Dismissed.

31.08.2021
parveen kumar

(HARNARESH SINGH GILL)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes/No
Yes/No