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

**CRR-813-2021(O&M)
Date of decision :13.08.2021**

Annu ... Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Vimal Kumar Gupta, Advocate for the petitioner.
 Mr. Praveen Bhadu, Asstt. Advocate General, Haryana.
 (Through Video Conferencing)

VIKAS BAHL, J. (ORAL)

Prayer in the Criminal Revision is for setting aside order dated 24.12.2020 passed by the learned Principal Magistrate, Juvenile Justice Board, Gurugram in BA/232/2020 vide which the regular bail application of the petitioner in FIR No.1027 dated 28.05.2020, under Sections 148, 149, 302, 120-B of IPC, 1860 and Sections 25, 54, 59 of Arms Act has been dismissed and also for setting aside the order dated 20.07.2021 passed by the Ld. Additional Sessions, Gurugram vide which, the appeal filed by the petitioner has also been dismissed.

The case of the prosecution is that one Ram Gopal S/o Shri Krishan had given a statement that he along with his wife Kamla and son Mannan @Mannu and daughter Shivani reside on rental basis in Gali No.16 Nayi Basti, Gurgaon in front of the house of one Ramesh Kataria. It is further the case of the complainant-Ram Gopal that on 28.05.2020, when he had gone

to Sadar Bazar, Gurugram at about 05.30 PM, his daughter Shivani had called up on the mobile phone and stated that Mannan @ Mannu had been shot and had died at Medanta Hospital, Gurugram. Further, the case of the prosecution is that Mannan @ Mannu was friends with Sanchit Tripathi S/o Vinay Tripathi. The said Sanchit Tripathi was romantically involved with a girl named Sneha, due to this, Dushyant had ill-feelings towards Sanchit Tripathi and as such Dushyant used to warn Mannan @ Mannu and used to stop him from supporting Sanchit Tripathi and threatened him with dire consequences in case he does not do so. On 28.05.2020 when Mannan @ Mannu had gone to the shop of his friend Shivam then Dushyant along with Hanni, Rahul, Bhanu @ Dhillu, Manish and two more boys came on an Acura and on a bike and Dhillu fired at Mannan @ Mannu.

The petitioner was not named in the FIR and his name was included on the basis of disclosure statement of Dhillu. Further, no overt act was attributed to the petitioner. The petitioner was arrested on 29.05.2020 and he applied for bail under Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as "Act of 2015"), being a child in conflict with law. The said application for bail was dismissed by the learned Principal Magistrate, Juvenile Justice Board, Gurugram vide impugned order dated 24.12.2020. The appeal therefrom was also dismissed vide impugned order dated 20.07.2021. Against the said order, the petitioner has approached this Court.

Learned counsel for the petitioner has vehemently argued that the petitioner was entitled to bail and the impugned orders have been illegally passed. It is submitted that the petitioner was not named in the FIR nor any overt act has been attributed to him. It has also been stated that the petitioner is

not involved in any other case and challan has already been filed. Further, there are as many as 28 witnesses and even the trial with respect to the juveniles has not started. It has further been argued by the learned counsel that as per the provisions of Section 18 of the Act 2015, the maximum period that the petitioner could be kept in a Special Home is three years and that he has already undergone more than 1 year and 2 months. It has been vehemently argued by the learned counsel for the petitioner that in fact as per the provisions of Section 12 of the Act 2015, in the case of a minor, bail is the rule and jail is the exception. Moreover, both the Courts below have fallen in grave error in not considering the fact that the case of the present petitioner does not even remotely fall within the three reasons/circumstances mentioned under which the bail of the petitioner could be refused.

It has been pointed out that the Courts below on the basis of presumption/assumption came to the conclusion that the petitioner “may indulge in substance abuse and may come into the contact of anti-social elements and may commit similar kind of offences”. The precise argument is that without there being any material on record, the said presumption has been made. It has further been argued that reference in the impugned order to the Social Background Report to the effect that the petitioner is habitual of consumption of alcohol and smoking, cannot in itself raise a presumption so as to bring it within the circumstances as mentioned in Section 12 of the Act 2015. Reliance has also been placed by the learned counsel for the petitioner on three judgments of this Court in CRR-2201-2019 decided on 22.09.2020 titled as “**Prabhkirat Singh @ Paras Versus State of Punjab**”, CRR-1019-2020 decided on 25.03.2021 titled as “**Gurkirat @ Gora Versus State of Haryana**” and CRR-233-2021 decided on 02.06.2021 titled as “**Vishnu Versus**

State of Haryana”. Thus, it has been prayed that the impugned orders be set aside and the petitioner be released on regular bail.

Per contra learned counsel for the State has submitted that the orders passed by the Board/Court below are detailed and have taken into consideration all aspects of the matter and thus, the present revision petition deserves to be dismissed. It has further been stated that, in the present case, a heinous crime has been committed by the petitioner and thus, he does not deserve the concession of bail.

This Court has heard the learned counsel for the parties and perused the record and is of the opinion that the present criminal revision petition deserves to be allowed and the petitioner deserves to be released on bail.

It is not in dispute that the petitioner has not been named in the FIR. No overt act has been attributed to the petitioner. The fatal shot as per the prosecution version has been attributed to Dhillu. The petitioner has been in custody since 29.05.2020 and the challan has been presented and there are as many as 28 witnesses and the trial in the case of the juvenile has not even started. It is thus, apparent that it will take substantial time before the trial is concluded.

It is further apparent that in the present case, the petitioner is a juvenile and his bail application is governed by the provisions of Section 12 of the Act of 2015. Section 12 of the Act of 2015 is reproduced hereinbelow:-

‘When any person, who is apparently a child and is alleged to have committed a bailable or non-bailable offence, is apprehended or detained by the police or appears or brought

before a Board, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, be released on bail with or without surety or placed under the supervision of a probation officer or under the care of any fit person:-

Provided that such person shall not be so released if there appears reasonable grounds for believing that the release is likely to

- bring that person into association with any known criminal or*
- expose the said person to moral, physical or psychological danger or*
- the person's release would defeat the ends of justice, and the Board shall record the reasons for denying the bail and circumstances that led to such a decision.”*

It has been correctly observed in para 6 of the order of the learned Principal Magistrate, Juvenile Justice Board that benefit of bail is a matter of right for a child-in-conflict with law and denial thereof is an exception. In the background of the said settled proposition, it has further been considered as to whether the impugned orders rejecting the bail have been correctly passed or not.

Before proceeding further, it would be apt to make a reference of the judgments which have been relied upon by the learned counsel for the petitioner. The relevant portion of judgment passed in CRR-1019-2020 passed in “**Gurkirat @ Gora Versus State of Haryana**” is reproduced herein below:-

“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.

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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.

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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.”

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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.

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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/Illaq Magistrate.”

A perusal of the above-said case would show that even where the allegation against the petitioner therein (Gurkirat@ Gora) was that he gave an iron pipe blow on the chest and back of the son of the complainant, the petitioner therein was released on bail.

A Coordinate Bench of this Court was pleased to grant bail in **Vishnu**'s case (supra) also where the allegation was that the petitioner therein had inflicted the injury on the head of the deceased and a blood-stained wooden stick was recovered from the petitioner therein. Relevant portion of the said judgment is reproduced hereinbelow:-

“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.

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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.

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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 inforce, 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.

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In the present case, both the Board/Court below have not even considered the fact that the petitioner has been in custody since 29.05.2020 and challan has been filed and there is no overt act attributed to the petitioner and in fact, the petitioner was not even named in the FIR. Merely on account of one line mentioned in the Social Background Report (SBR) to the effect that he is 'habitual to consumption of alcohol and is into smoking', presumptions have been drawn by the Courts so as to state that he may commit similar kind of offence and come into contact with anti-social elements. Even from a reading of the impugned orders, it is apparent that the said presumption is not a part of the Social Back Report (SBR).

Learned counsel for the petitioner has also challenged the "petitioner being habitual to consumption of alcohol and into smoking" as mentioned in the Social Background Report (SBR) on the ground that since 29.05.2020, the petitioner has been in custody and since the status report has been prepared after 29.05.2020, thus, it is difficult to visualize as to how the said conclusion has been drawn. Be that as it may, this Court feels that the case of juvenile cannot be put at a lower pedestal than that of an adult accused. Merely consumption of alcohol or smoking cannot lead to the presumption, which has been drawn by the Board/Court below.

Accordingly, the present Criminal Revision Petition is allowed and the impugned order dated 20.07.2021 passed by the learned Additional Sessions Judge, Gurugram as well as the order dated 24.12.2020 passed by the

Principal Magistrate, Juvenile Justice Board, Gurugram 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 concerned trial Court/Duty Magistrate/Illaq Magistrate.

However, nothing stated above shall be construed as an expression of opinion on the merits of the case.

Since the main petition has been decided, the pending miscellaneous application, if any, also stands disposed of.

(VIKAS BAHL)
JUDGE

13.08.2021

Jitesh (JTS)

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