

CRR-848-2021

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

CRR-848-2021.

Date of Decision:-17.09.2021.

Karan

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Yogesh Vats, Advocate for the petitioner.

Mr. Manish Dadwal, AAG, Haryana.

(Through Video Conferencing)

VIKAS BAHL, J. (Oral)

Prayer in the present criminal revision is for setting aside the order dated 15.06.2021 passed by the Duty/Principle Magistrate, Juvenile Justice Board/JMIC, Jind, as well as the order dated 09.07.2021 passed by the Additional Sessions Judge, Jind, vide which the bail application of the petitioner, who was a juvenile at the time of the incident, has been dismissed and the appeal therefrom, has also been dismissed.

The case of the prosecution is that one Satnam Singh had given a statement that he was working as a driver of a Scorpio vehicle bearing Registration No.PB-01A-7622 and that he was going from Kaithal to Rohtak along with one Vivek and while travelling, one white colour car came from behind, overtook his vehicle and applied breaks in front of his

CRR-848-2021

car and out of the said car, three young boys came out of which one young boy came near the window with the pistol and opened his window and put the pistol on his forehead and the other two boys put the pistol on the head of Vivek and then took away the vehicle along with phone, laptop (dell), purse in which there were two ATMs, one credit card and documents of motorcycle and a purse containing around Rs.1,000/- in the vehicle. The petitioner being a juvenile applied for bail under Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short 'the Act of 2015') but however, the same was dismissed vide order dated 15.06.2021 and the appeal therefrom was also dismissed on 09.07.2021.

Learned counsel for the petitioner has argued that in the present case, it was Navdeep @ Chhotu and Sudhir S/o Rajbir who were the ones, who as per the prosecution case, were having pistols in their hand. The allegation against the present petitioner is that he was accompanying them. It is further submitted that the petitioner was arrested on 18.01.2021 and the challan has already been presented on 16.06.2021 and there are 26 witnesses and no one has been examined in the case. It has further been submitted that the trial is likely to take time. It is also submitted that the mother of the petitioner is suffering from HIV as well as cervical cancer and his father and brother have already died and thus, there is no one to take care of the mother.

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 @**

CRR-848-2021

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, on instructions from ASI Bhagwat Dayal, has submitted that the orders passed by the Board/Court are detailed and in accordance with law. It is further submitted that the petitioner is also involved in four other cases and thus, he does not deserve the concession of bail.

Learned counsel for the petitioner to rebut the said aspect has submitted that the petitioner is on bail in all the said four cases.

This Court has heard the learned counsel for the parties and perused the record.

In the present case the petitioner has not been named in the FIR. Moreover as per the prosecution, it was Navdeep @ Chhotu and Sudhir S/o Rajbeer who were carrying pistols and in fact no overt act has been attributed to the petitioner. The petitioner has been custody since 18.01.2021 and the challan has been presented in the present case and there are as many as 26 prosecution witnesses and the trial has not started as yet and it is apparent that it would take substantial time before the trial is concluded.

It is further apparent that in the present case, the petitioner was a juvenile at the time of the incident 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:-

CRR-848-2021

“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.”*

Before proceeding further, it would be apt to make a reference to 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 hereinbelow:-

CRR-848-2021

“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

CRR-848-2021

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.

Xxxxxxxxx xxx

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.

Xxx xxx xxx

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

CRR-848-2021

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

CRR-848-2021

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/Illaqa 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

CRR-848-2021

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 coaccused 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,

CRR-848-2021

an application for re-determining the age of the petitioners is pending before the Trial Court.

Xxxxxx xxx

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 in force, 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

CRR-848-2021

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.

Xxxxxx xxx

In the present case, the Board/Court has not even considered the fact that the petitioner has been in custody since 18.01.2021 and the challan has already been filed and the main accused in the present case are Navdeep and Sudhir and in fact the petitioner was empty handed. The fact that the mother of the petitioner is also suffering from HIV and cervical cancer and that there is no other person to take care of the said mother as the father and the brother of the petitioner are stated to have died has also not been considered. On presumption, it cannot be stated that the petitioner would be in bad company if enlarged on bail. With respect to the other cases in which the petitioner is involved, suffice it to state that the

CRR-848-2021

petitioner is already on bail in the said cases and as per the judgment of the Hon'ble Supreme Court in **Criminal Appeal No.159 of 2012** titled as ***Maulana Mohd. Amir Rashadi Vs. State of U.P. and another*** 2012 (2) SCC 382, it has been held that it is the merits of the case in question which are to be considered primarily to decide as to whether the bail is to be granted or not and it cannot be rejected merely on the basis of antecedents of the other cases. The relevant portion of the said judgment is reproduced hereinbelow:-

“As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc.”

Keeping in view the above-said facts and circumstances, the present revision is allowed and the impugned order dated 15.06.2021 passed by the Duty/Principle Magistrate, Juvenile Justice Board, Jind/JMIC, Jind as well as the order dated 09.07.2021 passed by the Additional Sessions Judge, Jind, 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/Illaqa Magistrate and further subject to him not being required in any other case.

However, nothing stated above shall be construed as a final expression of opinion on the merits of the case and the Trial Court would

CRR-848-2021

proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present revision petition.

Since the main revision petition has been decided, the pending miscellaneous application, if any, shall stand disposed of.

(VIKAS BAHL)
JUDGE

September 17, 2021.
sandeep
Whether speaking/reasoned:-
Whether Reportable:-

Yes/No
Yes/No