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

CRR-1456-2019

Date of Decision: 23.03.2021

Pawan @ Bhola

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. K.D. Sehra, Advocate,
for the petitioner.

Mr. Anmol Malik, DAG, Haryana.

SUDIP AHLUWALIA, J. (ORAL)

This revision petition has been preferred against the impugned order dated 09.05.2019, passed by the Ld. Sessions Judge, Faridabad, vide which the appeal preferred on behalf of the petitioner, who is a juvenile, against the previous order dated 20.04.2019, passed by the Ld. Principal Magistrate, Juvenile Justice Board, Faridabad, seeking release of the petitioner on bail, were dismissed.

2. Ld. Counsel for the petitioner has contended that the petitioner would have been entitled to bail automatically under Section 12(1) of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short 'the Act'), and the only circumstance to deny such bail could have been covered by the Proviso to Section 12(1) of the Act, which is set out as below:

“...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.”

3. However, in the impugned order dated 20.04.2019 passed by the Ld. Principal Magistrate, Juvenile Justice Board, Faridabad, it was observed, *inter alia*:

“Reliance can be placed upon Shimil Kumar Vs. State of Haryana, 2013(4) RCR Criminal page 16 for the said purpose. In the said judgment, Hon'ble High Court has held in judgment para 30 that in cases, where the CCL has been accused of aggravated offences which shock the conscience of the society, it would be safer to protect him from the collective wrath of the society, on account of retribution such dastardly act may possibly invite. Therefore, in these circumstances in case applicant/CCL is released on bail at this stage then there is an apprehension that he may come in contact with criminals and it shall also defeat the ends of justice.”

4. It is submitted further that there is no mention of any material as to how an apprehension had arisen that once released, the petitioner/child may come in contact with criminals.

5. The appeal preferred by the petitioner against the aforesaid order of the Ld. Principal Magistrate, Juvenile Justice Board, Faridabad, was dismissed after observing that the petitioner's application under Section 328 of the Cr.P.C. was still pending before the Ld. Juvenile Justice Board, Faridabad, and that preliminary assessment regarding his capacity to commit

aforesaid order was passed on 09.05.2019 by the Ld. Sessions Judge, Faridabad, in the appeal, although on last page of the same, the date has been erroneously typed as 09.05.2018. It transpires that subsequently the determination under Section 15 of the Act had been done by the prescribed Authority, after which the Ld. Principal Magistrate, Juvenile Justice Board, Faridabad, on 30.09.2019, transferred the matter for trial before the Children Court under Section 18(3) of the Act. A copy of the relevant order was sent up by Ld. Counsel for the petitioner through e-mail when the matter had come up for hearing yesterday.

6. In the opinion of the Court, the reasons for rejecting the bail prayer of the petitioner by both the Ld. Courts below at this stage are not convincing. It was the opinion of the Ld. Principal Magistrate, Juvenile Justice Board, Faridabad, that if released, the petitioner was liable “to face the collective wrath of the society on account of retribution for such dastardly act”. It, however, transpires that subsequently during trial, the complainant Ramesh Chand, who happens to be the grandfather of the deceased Hans @ Lalu did not give any incriminating statement against the petitioner during his testimony as PW-5 from the prosecution side. Similarly, Raj Pal, father of the deceased, as also Mahender Singh, uncle of the deceased, again did not give any incriminating statements against the petitioner in the course of their depositions as PW-11 and PW-3, respectively. In fact the father of the deceased PW-11 was declared hostile by the prosecution side. Such conduct of the closest relations of the deceased would *prima facie* go to indicate that at least as of now, they have no anger or revengeful attitude against the petitioner, and so the apprehension of the Ld. Principal Magistrate, Juvenile Justice Board,

Faridabad, to the effect that if released, the petitioner was at risk of facing collective wrath of the society would appear to be misplaced. Similarly, the fact that determination under Section 15 of the Act was pending when the petitioner's appeal against rejection of his bail prayer was dismissed by the Ld. Sessions Judge, Faridabad, on the relevant date, and which has since been completed in the meantime is inconsequential for the purpose of considering his entitlement for bail in terms of Section 12(1) of the Act.

7. For the aforesaid reasons, the present petition is allowed after setting aside the impugned orders of both the Ld. Courts below and the petitioner, who by now has remained in detention for two and a half years, since 10.09.2018, is permitted to be released on bail to the satisfaction of the Ld. Trial Court/Duty Magistrate concerned.

8. Disposed off.

23.03.2021*Apurva***(SUDIP AHLUWALIA)
JUDGE**

1. Whether speaking/reasoned: Yes/No
2. Whether reportable: Yes/No