

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRR-943-2021(O&M)

Date of decision : 30.09.2021

Ankit

... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr.Pawan Singh, Advocate
for the petitioner.

Mr.Manish Dadwal, AAG, Haryana.

(Through Video Conferencing)

VIKAS BAHL, J.(ORAL)

Prayer in the present revision petition is for setting aside the impugned orders dated 05.06.2021 as well as 11.06.2021. The learned Principal Magistrate, Juvenile Justice Board, Sonipat had rejected the application of present petitioner under Section 12 of the Juvenile Justice Act, 2015 (in short “the Act”) vide order dated 05.06.2021 and the appeal filed against the said order has also been dismissed on 11.06.2021 by the Additional Sessions Judge, Sonapat. It is prayed that the said orders be set aside and the petitioner, who was juvenile on the date of alleged incident, be granted the concession of regular bail.

Learned counsel for the petitioner has submitted that in the present case, the petitioner was not named in the FIR and the alleged incident had taken place on 27.06.2020 and on the said date, the petitioner

apparent from the certificate issued by the Board School Education Haryana (Annexure P-1). It has further been submitted that the petitioner had been declared as juvenile vide order dated 03.02.2021 by the Court of Additional Sessions Judge, Sonapat. It has also been submitted that in the present case, the impugned orders deserve to be set aside solely on the ground that there was no social investigation report on record and in absence of the same, there was no material to even remotely state that the case would fall within the exceptions recognized under Section 12 of the Act. It has been argued that the petitioner has no other case against him and thus, the presumption drawn in the impugned orders is absolutely illegal. It has also been submitted that the petitioner was arrested on 04.07.2020 and although, was granted special parole from 30.03.2021 till 15.06.2021, but since 15.06.2021 the petitioner is in custody and thus, he has already undergone sentence of 1 year and 11 days. In the present case, the challan has been filed and charges have been framed. As many as 29 prosecution witnesses are there and none have been examined, and the trial is likely to take time. It has further been submitted 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 11 days. 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.

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.

In the present case, it is not in dispute that the petitioner has not been named in the FIR. The petitioner, vide order dated 03.02.2021 passed by the Additional Sessions Judge, Sonapat, has been declared to be juvenile and the said order has not been challenged till date. The challan in the present case has already been filed and there are 29 witnesses and none have been examined and thus the trial is likely to take some time. The petitioner has already undergone a period of 1 year and 11 days.

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.”*

A perusal of the above Section 12 of the Act would show that bail is the rule and not jail, in a case of juvenile and the same is to be refused only in case Court comes to the conclusion on the basis of material that the case is covered under three exceptions as mentioned in Section 12 of the Act.

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:-

“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/Illqa 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 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, 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 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 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.”

A perusal of the order dated 05.06.2021 more so, paragraph 5 would show that in the present case, social investigation report has not been filed by the DCPO. The petitioner is not involved in any other case and yet in the impugned order, it has been mentioned that he would be exposed to moral and psychological danger and the fact that the petitioner would fall into the company of other criminals, has also been observed on the basis of presumption. A Coordinate Bench of this Court in case titled as “***Sanjit vs. State of Haryana***”, in CRR-962-2020 decided on 02.07.2020 has observed as under:-

“A bare reading of the provision reproduced herein would make it apparent that an exception has been carved out for declining the bail to the juvenile who is in conflict with law i.e. he or she is likely to come in association with any known criminal or upon release on bail would expose such juvenile to moral, physical or psychological danger or that release of the juvenile would defeat the ends of justice. For invoking such

exception, there has to be some material before the competent authority on the basis of which it can be held that the release of the juvenile in the present case would fall within the exception recognized under Section 12 of the Act. The impugned order dated 13.5.2020 passed by the Appellate Court at Annexure P-1 is completely bereft of any such reasoning. No such material/evidence has been adverted to in the order. Seriousness of the offence as mentioned in the FIR would not be a ground to deny to the juvenile the concession of bail in the light of Section 12 of the Act.”

Thus, since in the present case, there is no material to bring the case within the exceptions as mentioned in Section 12 of the Act, the impugned orders deserves to be set aside on the said ground alone. In addition to the said fact, it would be relevant to note that in paragraph 6 of the judgment of the Additional Sessions Judge, Sonapat, dated 11.06.2021, it has been perversely noted that the petitioner at the time of incident was of 17 ½ years whereas, as per the certificate mentioned above, it is apparent that the petitioner born on 08.08.2003 was less than 17 years on the date of alleged incident. Moreover, the petitioner has undergone 1 year and 11 days of actual custody; there is no other case against the petitioner; challan has been filed in the present case; no further recovery has to be effected from the petitioner; there are 29 prosecution witnesses and none have been examined; and the trial is likely to take time, thus, the present revision petition is allowed and the impugned orders dated 05.06.2021 and 11.06.2021 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 subject to his

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

September 30, 2021
Davinder Kumar

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