

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

**208**

**CRR-1110-2021**

**Decided on : 04.10.2021**

Saurabh

... Petitioner

Versus

State of Haryana

... Respondent

**CORAM: HON'BLE MR. JUSTICE VIKAS BAHL**

**(Through Video Conferencing)**

PRESENT: Mr. Krishan Singh, Advocate  
for the petitioner.

Mr. Manish Dadwal, AAG, Haryana.

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**VIKAS BAHL, J. (Oral)**

Challenge in the present Criminal Revision is to the order dated 03.08.2021 passed by the Principal Magistrate, Juvenile Justice Board, Yamuna Nagar at Jagadhri, vide which the application under Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short 'The Juvenile Justice Act') has been dismissed and also to the order dated 24.08.2021, vide which the appeal filed by the petitioner against the said order has also been dismissed by the Additional Sessions Judge, Yamuna Nagar at Jagadhri. Further prayer has been made in the petition for allowing the application of the petitioner under Section 12 of the Juvenile Justice Act and for releasing the petitioner on bail.

Learned counsel for the petitioner has submitted that the petitioner along with one Shubham has been made an accused in the present case. It is submitted that as per the prosecution version, both had committed illegal acts with the minor-victim and that the said Shubham has already been granted regular bail on 18.03.2021 by the Additional Sessions Judge, Yamuna Nagar at Jagadhri. It is further submitted that

the prosecution had examined PW1 (complainant, father of the victim), PW2 (victim), PW3 (mother of the victim) and PW4 (alleged eye witness) and all the said witnesses have turned hostile, causing a great dent in the case of the prosecution. It is also submitted that the petitioner was declared a Juvenile and thus, the maximum sentence that can be awarded to the petitioner is 3 years and out of the same, the petitioner has already undergone actual custody of 1 year, 2 months and 10 days. It is further argued that the petitioner is not involved in any other criminal case and there are as many as 15 witnesses left and thus, the trial is likely to take time. It has further been argued that the Principal Magistrate, Juvenile Justice Board, Yamuna Nagar at Jagadhri, on the basis of surmises and conjectures, has tried to make out a case under the exceptions of Section 12 of the Juvenile Justice Act and the Additional Sessions Judge, Yamunanagar at Jagadhri has, in fact, not even considered the aspect of Section 12 in the present case. Reliance has been placed by the learned counsel for the petitioner on three judgements 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 **“VishnuVersus 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.

Learned State counsel has further argued that in the present case, since the medical evidence, prime facie, establishes that the petitioner was the person who has committed the illegal act inasmuch as human semen was detected in the underwear of the petitioner apart from other things. It is also submitted that as per the Social Investigation Report of the petitioner, there was parental neglect and peer group influence on the petitioner and thus, the apprehension of the Principal Magistrate, Juvenile Justice Board, Yamuna Nagar at Jagadhri that the petitioner is likely to bring in association with criminals, was not misplaced.

Learned State counsel has placed on record the custody certificate, as per which the actual custody of the petitioner is 1 year, 2 months and 10 days and the petitioner is not involved in any other case. He has further submitted that 4 witnesses have been examined in the present case and 15 witnesses are left and the next date of the case is 17.10.2021.

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

As per the prosecution case, the allegation of committing the obscene act is on the petitioner as well as one Shubham. The said

Shubham has already been granted regular bail on 18.03.2021. The material witnesses PW1 (complainant, father of the victim), PW2 (victim), PW3 (mother of the victim) and PW4 (alleged eye witness) have already turned hostile, thus, causing a serious dent in the case of the prosecution. The petitioner has been in custody since 24.07.2020 and thus, the period of custody of the petitioner is 1 year, 2 months and 10 days and there is no other case pending against the petitioner and there are as many as 15 witnesses who are yet to be examined and thus, the trial will take substantial time before it concludes.

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."*

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.*

*Xxxxxxxx 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 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.”*

*Xxx xxxxxx*

*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.*

*Xxx xxx xxxx*

*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/Ilaqa 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.*

*Xxx xxxxxxx*

*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.*

*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 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”*

A perusal of the Section 12 of the Juvenile Justice Act as well as the judgements on this aspect, make it clear that in the case of a Juvenile, bail is the rule and jail is an exception. The Juvenile Justice Board/Court below has not given due importance to the fact that the petitioner has been in custody since 24.07.2020 and the co-accused of the petitioner Shubham has already been released on regular bail on 18.03.2021. Even, the factum of delay of trial and the fact that the main material witnesses have turned hostile, has not been given due consideration. Even the observation to the effect that as per the social investigation report, there is a parental neglect and peer group influence, cannot be stated to be enough in order to bring the case within the three exceptions carved out under Section 12 of the Juvenile Justice Act, moreso that the petitioner is not involved in any other criminal case.

Moreover, this Court feels that the case of a juvenile cannot be put at a lower pedestal than that of an adult accused.

Keeping in view the aforesaid facts and circumstances, the present criminal revision petition is allowed and the impugned order dated 03.08.2021 passed by the Principal Magistrate, Juvenile Justice Board, Yamuna Nagar at Jagadhri and the order dated 24.08.2021 passed by the Additional Sessions Judge, Yamuna Nagar at Jagadhari are set aside and the petitioner is directed to be released on bail on his furnishing bail bonds/surety bonds to the satisfaction of the concerned trial Court/Duty Magistrate and also subject to his not being required in any other case.

However, nothing stated above shall be construed as an expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail application.

**(VIKAS BAHL)**  
**JUDGE**

**04.10.2021**

*Mehak*

Whether reasoned/speaking?  
Whether reportable?

Yes/No  
Yes/No