

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

114

CRR-1240-2020

Date of Decision : 22.07.2021

Shivansh

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. U.K. Agnihotri, Advocate
for the petitioner.

Mr. Ranvir Singh Arya, Addl. A.G., Haryana
for the respondent-State.

ARUN KUMAR TYAGI, J. (Oral)

(The case has been taken up for hearing through video conferencing.)

2. The petitioner has filed the present revision petition under Section 102 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short, "the JJ Act") read with Section 401 of the Code of Criminal Procedure, 1973 (for short, "the Cr.P.C.") for setting aside the impugned order dated 15.10.2020 passed by learned Additional Sessions Judge (Fast Track Special Court under POCSO Act), Yamuna Nagar at Jagadhri in Criminal Appeal No.135 of 2020 upholding order dated 25.09.2020 passed by learned Principal Magistrate, Juvenile Justice Board, Yamuna Nagar at Jagadhri dismissing the application for grant of regular bail to the petitioner in case FIR No.115 dated 22.03.2020 registered under Sections 379-B and 201 of the Indian Penal Code, 1860 (for short, "the IPC") in Police Station Sadar, Yamuna Nagar.

3. Briefly stated the facts giving rise to the filing of the present revision petition are that the above said FIR was registered on statement of Krishan Lal. In his statement Krishan Lal alleged that on 21.03.2020 when after parking his truck at Matka Chowk, Jagadhri he was going to his house in an auto rikshaw and reached at Vishavkarma Chowk, Yamuna Nagar, two persons (claimed by the prosecution to be Dilroop @ Roopa and the petitioner-Shivansh) came in a black car and stopped nearby him and he took lift from them. After getting the petrol filled in the car and taking amount of Rs.50/- from him they turned towards village Dhorang and in the area thereof snatched amount of Rs.1,300/- and mobile phone from him and threw him in the fields and fled from the spot. During investigation, Dilroop @ Roopa was arrested and recovery of snatched amount of Rs.300/- was made from him. On the basis of his disclosure statement, the petitioner was apprehended on 02.07.2020 and he got the car, registration certificate and snatched amount of Rs.200/- recovered. The petitioner applied for bail before the Juvenile Justice Board, Yamuna Nagar at Jagadhri which was dismissed vide impugned order dated 13.08.2020 and appeal filed by the petitioner against the above said order was dismissed by learned Additional Sessions Judge, Yamuna Nagar at Jagadhri vide order dated 24.08.2020. The petitioner again applied for bail before the Juvenile Justice Board, Yamuna Nagar at Jagadhri which was dismissed vide impugned order dated 25.09.2020. The appeal filed by the petitioner against the above said order was dismissed by learned Additional Sessions Judge (Fast Track Special Court under POCSO Act), Yamuna Nagar at Jagadhri vide order dated 15.10.2020.

4. Feeling aggrieved, the petitioner has filed the present criminal revision petition for setting aside impugned orders and directing release of the petitioner on bail.

5. The petition has been opposed by learned State Counsel in terms of short reply filed by way of affidavit dated 27.11.2020 of Subhash Chand, HPS, Deputy Superintendent of Police, Yamuna Nagar-3 and short reply filed by way of affidavit dated 05.02.2021 of Kamal Deep Goyal, HPS, Superintendent of Police, Yamuna Nagar.

6. The petitioner filed counter/rejoinder dated 22.02.2021 to the replies filed by the respondent.

7. I have heard learned Counsel for the petitioner and learned State Counsel and gone through the record.

8. Learned Counsel for the petitioner has argued that the petitioner has been falsely implicated in the case on the basis of disclosure statement of co-accused Dilroop @ Roopa. The petitioner was not involved in commission of the alleged offences. During investigation, the petitioner was joined in test identification parade but the complainant did not identify the petitioner to be the person involved in the crime. The complainant has also given affidavit dated 14.05.2020 regarding non-involvement of the petitioner and non-user of the car No.HR-24AA-1985 in the crime. Recovery of car which belongs to father of the petitioner and amount of Rs.200/- does not incriminate the petitioner for commission of crime. In view of Section 12 of the JJ Act the petitioner was entitled to grant of bail. Report of the Probation Officer was not in any manner adverse to the petitioner. His application for grant of bail was wrongly declined by the Principal Magistrate,

Juvenile Justice Board, Yamuna Nagar at Jagadhri and his appeal was wrongly dismissed by learned Additional Sessions Judge (Fast Track Special Court under POCSO Act), Yamuna Nagar at Jagadhri. The impugned orders suffer from material illegality. As per the provisions of Section 14 of the JJ Act, inquiry was required to be completed within a maximum period of six months including extended period of two months but the inquiry is still pending. No prosecution witness has been examined so far. Inquiry is likely to take long time due to restrictions imposed to prevent the spread of Covid-19. No useful purpose will be served by further detention of the petitioner in Observation Home. Learned Counsel for the petitioner has accordingly prayed that the impugned orders may be set aside and the petitioner may be ordered to be released on bail. In support of his arguments, learned Counsel for the petitioner has placed reliance on judgments in ***CRR-3627-2013 titled as 'Bittu Vs. State of Haryana' decided on 11.03.2014; CRR-1110-2004 titled as 'Sham Lal and another Vs. State of Haryana' decided on 08.09.2004*** and ***CRM-M-1203-2014 titled as 'Ramesh Vs. State of Haryana' decided on 14.03.2014***.

9. On the other land, learned State Counsel has argued that the petitioner was apprehended in the case on the basis of CCTV footage of CCTV Cameras installed on the petrol pump in which the car belonging to the father of the petitioner with its number plate was clearly visible at the time of filling of petrol in it. Recovery of car and amount of Rs.200/- was made from the petitioner. The petitioner is involved in two more cases of similar nature. There is sufficient material to hold that release of the petitioner on bail will expose him to

moral, physical or psychological danger and will also bring him into association with known criminals and will thereby defeat the ends of justice. Bail was rightly declined to the petitioner by the Courts below. The impugned orders do not suffer from any illegality. Therefore, the petition may be dismissed.

10. The JJ Act was enacted to consolidate and amend the law relating to children alleged and found to be in conflict with law and children in need of care and protection by catering to their basic needs through proper care, protection, development, treatment, social re-integration, by adopting a child-friendly approach in the adjudication and disposal of matters in the best interest of children and for their rehabilitation through processes provided, and institutions and bodies established.

11. Section 12 of the JJ Act, which deals with the matter of grant of bail to a person who is apparently a child alleged to be in conflict with law, reads as under :-

“12.Bail to a person who is apparently a child alleged to be in conflict with law.—(1) 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.

(2) When such person having been apprehended is not released on bail under sub-section (1) by the officer-in-charge of the police station, such officer shall cause the person to be kept only in an observation home in such manner as may be prescribed until the person can be brought before a Board.

(3) When such person is not released on bail under sub-section (1) by the Board, it shall make an order sending him to an observation home or a place of safety, as the case may be, for such period during the pendency of the inquiry regarding the person, as may be specified in the order.

(4) When a child in conflict with law is unable to fulfil the conditions of bail order within seven days of the bail order, such child shall be produced before the Board for modification of the conditions of bail.”

12. The nature of the offence is not one of the factors on which bail may be granted or refused to the juvenile in conflict with law and, therefore, bail cannot be denied to a juvenile in conflict with law on the ground of gravity of the offence involved. Section 12 of the JJ Act requires bail to be mandatorily granted to the juvenile in conflict with law and grant of bail to the juvenile in conflict with law is the rule and denial an exception. Bail can be denied to a juvenile in conflict with law only where there appear reasonable grounds for believing that the release of the juvenile in conflict with law on bail is likely to bring him in

association with any known criminal or expose him to moral, physical or psychological danger or his release would defeat the ends of justice. For judicial precedents in this regard reference may be made to ***Mast. Dharmabir Singh Vs. State, NCT of Delhi (Delhi High Court): 2007(10) R.C.R. (Criminal) 328; Pankaj Vs. State of Haryana (PHHC) 2013(7) R.C.R. (Criminal) 1105; Praveen Vs. State of Rajasthan (Rajasthan High Court) : 2015(7) R.C.R. (Criminal) 22; Satbir Vs. State of Haryana (PHHC) : 2011(2) R.C.R. (Criminal) 621; Shiv Kumar @ Sadhu Vs. State of U.P. (Allahabad High Court) : 2011(8) R.C.R. (Criminal) 1346 and CRR-808-2020 titled as 'Sahil @ Nannu Vs. State of Haryana' decided by this Court on 09.06.2020.*** The Juvenile Justice Board has to record the reasons for denying the bail and circumstances that led to such a decision.

13. In the present case the petitioner along with his co-accused Dilroop @ Roopa is alleged to have snatched amount of Rs.1,300/- and mobile phone from complainant Krishan Lal. Recovery of car allegedly used in commission of the offences and amount of Rs.200/- is alleged to have been made from the petitioner.

14. In the present case, learned Principal Magistrate, Juvenile Justice Board, Yamuna Nagar at Jagadhri dismissed the application of the petitioner for grant of bail on the ground that his release on bail would expose him to moral, physical or psychological danger and that his release would defeat the ends of justice and he may come in association with the persons of criminal nature which would be against his interest but the learned Principal Magistrate, Juvenile Justice Board, Yamuna Nagar at Jagadhri did not refer to any material in support of

his decision. No such material was also referred to by learned Additional Sessions Judge (Fast Track Special Court under POCSO Act), Yamuna Nagar at Jagadhri and no such material has been placed before this Court by the respondent-State from which it could be inferred that release of the petitioner would bring him in association with any known criminal or expose him to moral, physical or psychological danger or his release would defeat the ends of justice.

15. In his report, the Probation Officer mentioned the reasons for commission of alleged offences to be parental negligence and the influence of peer group but the Probation Officer did not make any other adverse comment in the report. The Probation Officer did not mention that any friend or family member of the petitioner is a known criminal or that release of the petitioner was likely to bring him in association with any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice.

16. Bail has been declined to the petitioner mainly on the ground of involvement of the petitioner in two other cases FIR No.357 dated 17.03.2018 and FIR No.153 dated 17.07.2020 both under Section 379-B of the IPC but the petitioner was admitted to bail in both the cases. Pendency of other cases wherein the petitioner was granted bail is no ground to deny him bail in view of the law laid down by this Court in ***CRM-M-1203-2014 titled as 'Ramesh Vs. State of Haryana' decided on 14.03.2014***. It may also be observed here that the prosecution has not claimed that during investigation the complainant ever identified the petitioner as the person involved in the crime. In his

affidavit dated 14.05.2020 complainant has stated that the petitioner was not the boy involved and car No.HR-24AA-1985 (recovered from him) was not the vehicle used in the crime. Even though in the short reply dated 05.02.2021 it has been submitted that no test identification parade was conducted in the present case so that the question of complainant not identifying the petitioner did not arise but prima facie there is no explanation how without any such test identification parade for identification of the petitioner and the car, the petitioner could be said to be involved in the crime. Mere recovery of the car and currency notes from the petitioner do not prima facie incriminate the petitioner for commission of crime in the absence of any such test identification parade or even any CCTV footage showing presence of the petitioner in the car alleged to have been used in the commission of the crime.

17. In view of these facts and circumstances of the case particularly in the absence of any cogent material furnishing reasonable grounds for belief as to existence of any of the grounds specified in Section 12 of the JJ Act for denial of bail, the petitioner is entitled to grant of bail and the impugned orders of the Courts below declining bail to the petitioner suffer from material illegality and are liable to be set aside.

18. Accordingly, the revision petition is allowed and the impugned orders are set aside and the petitioner is ordered to be released on bail on furnishing of personal bond through his mother with bond of one surety to the satisfaction of the learned Principal Magistrate, Juvenile Justice Board, Yamuna Nagar at Jagadhri subject

to the following conditions:-

1. the mother shall take care of the petitioner and make provisions for providing of formal/informal vocational training to him to enable him to secure gainful employment on attaining of majority by him;
2. the mother shall also take care that the petitioner does not come in association with any known criminal or a person of doubtful character/criminal nature and is not exposed to any physical, moral and psychological danger; and
3. the Probation Officer/Child Welfare Officer, Yamuna Nagar at Jaghadhri shall visit the petitioner once every month for ascertaining his well being, counseling and guiding him.

19. However, in case of commission of any similar offence by the petitioner after his release on bail, bail granted to the petitioner shall be liable to be cancelled by the Principal Magistrate, Juvenile Justice Board, Yamuna Nagar at Jagadhri on application to be filed by the prosecution for this purpose.

22.07.2021

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(ARUN KUMAR TYAGI)
JUDGE

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