

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-1270-2020 (O&M)
DATE OF PRONOUNCEMENT: 12.08.2021

DEV TEWATIA @ DEBU **... Petitioner(s)**

Versus

STATE OF HARYANA **... Respondent(s)**

CORAM: HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL

Present:- Mr. Sanjay Vashisth, Advocate
Mr. Aakash Vashisth, Advocate for the petitioner(s).

Mr. Deepak Bhardwaj, DAG, Haryana.

ANUPINDER SINGH GREWAL, J.

Heard through video conferencing.

The petitioner has challenged the order passed by the Sessions Judge, Faridabad dated 20.10.2020 and the order passed by the Juvenile Justice Board dated 15.11.2019 whereby the application of the petitioner for his release on bail under Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short, 'the Act') has been rejected.

Learned counsel for the petitioner contends that the petitioner is an accused in FIR No.679 dated 30.09.2019 under Section 302, 120-B, 201, 34 IPC and Sections 25/54/59 of the Arms Act, registered at Police Station Sector 7, Faridabad. The petitioner is not named in the FIR. The case of the prosecution is that co-accused Deepak had fired shots at the deceased-Sharwan. The petitioner has been arraigned as an accused on the statement of co-accused Puneet and Ajay @ Monu that the petitioner was sitting on the motorcycle outside the place of occurrence. The petitioner is in custody since 13.11.2019 and no recovery has been effected from him. He further contends that the Courts below have erroneously rejected the petition although in terms of Section 12 of the Act, the

petitioner has to be released on bail on satisfaction of the three conditions stipulated therein. In support of his submissions, he has cited the judgments of the Coordinate Benches of this Court in the cases of **Vicky Vs. State of UT, Chandigarh, CRM-M-21388-2020**, decided on 31.08.2020, **Vishnu versus State of Haryana** in CRR No.233 of 2021, decided on 02.06.2021 and **Vishvas versus State of Punjab** in CRR No.53 of 2021, decided on 08.02.2021. He also contends that after his arrest in the instant case, the petitioner has been involved in another case on the disclosure statement of co-accused.

On the contrary learned State counsel has contended that the petitioner is involved in a heinous crime, punishable under Section 302 IPC and his release would defeat the ends of justice. He submits that as per the social investigation report, the petitioner has left the school due to failure in examination in the last class attended. He further contends that as per the social investigation report, the petitioner has been in bad company and had committed the crime due to peer pressure. He has left school and his release on bail would bring him in direct contact with the peer group under whose pressure he had committed the offence. He has relied upon the judgments of Allahabad High Court in the case of **Raju @ Ashish Vs. State of U.P. and another, CRR No.2492-2017, decided on 07.07.2018** and Patna High Court in the case of **Rajan Kumar Vs. The State of Bihar, Criminal Appeal (SJ) No.2117 of 2019, decided on 30.09.2019**. He also contends that this petition is not maintainable as the release of the juvenile would be governed by Section 439 of the Cr.P.C as he is being tried as an adult.

Heard.

The release of a juvenile/child in conflict with law on bail is governed by Section 12 of the Act which clearly spells out that

notwithstanding anything contained in the Code of Criminal Procedure or any other law for the time being in force bail shall be allowed to a child who is alleged to have committed a bailable or non-bailable offence. However, there is a rider to this directive, which has further been specified in the proviso of Section 12. Bail is not to be allowed in case there appears reasonable grounds for believing that the release of the juvenile is likely to bring him into association with any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice.

The social investigation report in the instant case does not indicate that the release of the petitioner would expose him to moral, physical or psychological danger or will bring him into contact with any criminal elements. It is, no doubt, mentioned in the social investigation report that the petitioner had committed the offence under peer pressure but it is also mentioned that he requires counseling and has positive attitude towards his teachers, petitioner is religious, had received school education and he aspires to join the defence forces. It is, thus, manifest that there are sufficient reasons to believe that the petitioner can be reformed. The Juvenile Justice Act is a special statute meant for the reformation of the child in conflict with law. It is necessary to endeavor to reform the delinquent child in consonance with the object of the Act to make him a responsible citizen of the country and contribute to nation building.

Furthermore, the petitioner is alleged to be standing outside the place of occurrence on a motorcycle and had not actively participated in the offence and it was the co-accused who had gone inside the plot and had shot the deceased. He has been in custody for a period of 1 year and 7 months. The conclusion of the trial is likely to take time due to Covid-19 pandemic.

I do not find any merit in the contention of the learned State counsel that the release of the juvenile on bail would be governed by Section 439 Cr.P.C. Section 12 of the Act stipulates the conditions for the release of a juvenile/child in conflict with law. It is a well settled proposition of law that the provisions of a special statute would prevail over the provisions of a general act. Reference can also be made to the judgment of the coordinate Bench of this court in the case of **Vicky and another Vs. State of U.T., Chandigarh (supra)** wherein the petitioner was also tried as an adult. The relevant paras of the judgment are reproduced hereunder:-

“11. A careful reading of the aforesaid provisions would make it clear that Section 1(4) of the J.J. Act clearly specifies that, despite anything contained in any other law for the time being in force, provisions of J.J. Act shall apply to all matters concerning children in need of care and protection and children in conflict with law.”

“The Act is a complete code in itself, which lays down a procedure as to how a child in conflict with law is to be dealt with. The emphasis being on efforts to rehabilitate a Child in Conflict with Law.”

“13. Per se, the provisions of Cr.P.C. would not be applicable in dealing with a Child in Conflict with Law, who has been apprehended or detained for having committed an offence by virtue of Section 1(4) of the J.J. Act. The only reference to the applicability of the provisions of Cr.P.C. is for the purposes of a ‘trial’ as envisaged under Section 19 of the J.J. Act.”

“Once a procedure is prescribed within the J.J. Act for grant of Bail, there can be no cogent reason for deviating from the same.”

The judgment relied upon by the learned State counsel are distinguishable from the facts of the instant case. In the case of **Raju @**

Ashish Vs. State of U.P. and another (supra), the petitioner was the main aggressor and along with the co-accused he had molested a young girl. The brother of the girl who had come to her rescue was assaulted by the petitioner and thrown into a well.

Consequently, the petition is allowed. The impugned order passed by the Sessions Judge, Faridabad dated 20.10.2020 and the order passed by the Juvenile Justice Board dated 15.11.2019 are set aside. The petitioner is ordered to be released on regular bail on his furnishing requisite bonds to the satisfaction of the Children's Court concerned.

The petitioner will undergo periodic counseling sessions with the counselor posted at District Child Protection Unit, Faridabad for a period determined by the counselor.

(ANUPINDER SINGH GREWAL)
JUDGE

12.08.2021

SwarnjitS

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