

CRR-1277-2020 (O&M)

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

(211)

CRR-1277-2020 (O&M).
Date of Decision:-02.12.2021.

Shankar @ Sanjay

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Naresh Kumar Ganga, Advocate for the petitioner.

Mr. Manish Dadwal, AAG, Haryana.

VIKAS BAHL, J. (Oral)

Challenge in the present revision petition is for setting aside the order dated 15.10.2020 vide which the Principal Magistrate, Juvenile Justice Board, Sirsa has dismissed the application filed by the petitioner for bail under Section 12 of the Juvenile Justice Act, 2015 in FIR No.135 dated 01.07.2020, under Sections 302, 201, 148, 149 of IPC and Section 25 of the Arms Act, registered at Police Station Ding. Challenge is also made to the order dated 5.11.2020 vide which the Additional Sessions Judge, Sirsa has dismissed the appeal filed by the petitioner against the aforesaid order dated 15.10.2020.

The case of the prosecution in brief is that the complainant Rajbeer had got his statement recorded to the effect that on 01.07.2020 said Rajbeer had gone to his brother Ramesh's house and had inquired about his nephew Anoop (deceased), on which he was told that Anoop had gone to

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the village pond with the buffaloes and his brother Ramesh had told him that he would take care of the buffaloes and he (complainant) must take care of Anoop. Complainant Rajbeer along with his brother Jaiveer went to the pond to take Anoop. When they reached near the village pond, they heard loud crying noise of Anoop and both the brothers then ran towards him. They saw some persons, as have been named in the FIR, including the petitioner, who was stated to have a stick in his hand. Vijay son of Satbeer pulled out a knife and stabbed the deceased on left side of his ribs upon which said Anoop fell down and then all the other accused gave him fist blows and kicks. It was also alleged that the petitioner had attacked Anoop with a *lathi* on his head and back and on the basis of the same, the FIR had been registered.

Learned counsel appearing for the petitioner has submitted that as per the prosecution version, a fatal injury has been attributed to Vijay son of Satbeer. It is also pointed out that in fact, the two alleged eye witnesses of the occurrence, as per the prosecution version, were PW-1 Rajbeer son of Jai Karan and PW-2 Jaiveer son of Jai Karan and both the witnesses have been examined and they have not supported the case of the prosecution. Reference has been made to the statement of PW-1 Rajbeer. The relevant portion of the said statement is reproduced hereinbelow:-

“.....We went there and saw that some persons with muffled faces having danda, knife etc. in their hands were causing injuries to my nephew. We raised lalkara and all the muffled faces persons fled away from the spot with their respective weapons. Accused Vijay son of Satbir, Subhash @

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Dholu son of Shri Rajpal, Sultan son of Rohtash, Dholu son of Surjeet Singh, Deepak @ Dholu son of Ramesh Kumar (produced through video conferencing) and juvenile Sanjay @ Shanker (facing trial separately in this Court, produced through video conferencing) are not those persons who were causing injuries to my nephew on that day. Thereafter, I and my brother saw that my nephew was crying due to injuries and later on he died.

At this stage, learned Public Prosecutor for state requests that the witness is suppressing the truth and that he wants to cross-examine this witness and that the witness be declared hostile. Heard. Request allowed.”

Reference has also been made to the statement of PW-2 Jaiveer. The relevant portion of the said statement is reproduced hereinbelow:-

“.....We went there and saw that some persons with muffled faces having danda, knife etc. in their hands were causing injuries to my nephew. We raised lalkara and all the muffled faces persons fled away from the spot with their respective weapons. Accused Vijay son of Satbir, Subhash @ Dholu son of Shri Rajpal, Sultan son of Rohtash, Dholu son of Surjeet Singh, Deepak @ Dholu son of Ramesh Kumar (produced though video conferencing) and juvenile Sanjay @ Shanker (facing trial separately in this Court, produced through video conferencing) are not those persons who were causing injuries to my nephew on that day. Thereafter, I and my

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brother saw that my nephew was crying due to injuries and later on he died.

At this stage, learned Public Prosecutor for State requests that the witness is suppressing the truth and that he wants to cross-examine this witness and that the witness be declared hostile. Heard. Request allowed.”

It has been argued that both the star witnesses have in fact stated that they had seen some persons with muffled faces who had caused injuries to their nephew (deceased) and the petitioners were not involved in the same. It has been further argued by the learned counsel for the petitioner that the co-accused of the petitioner i.e., Dholu and Subash, who were not juveniles, have been granted the concession of regular bail by this Court vide order dated 25.10.2021 passed in CRM-M-5784-2021. It is further submitted that the petitioner has been in custody since 01.07.2020 and the challan has been presented in this case and there are 26 witnesses out of which only 02 material witnesses have been examined and, thus, the trial is likely to take time moreso, in view of the pandemic situation. It is also submitted that the petitioner is not involved in any other case. It is also submitted that both the Courts below, on the basis of presumption and assumption, have come to the conclusion that the petitioner, if released, might be exposed to moral, physical and psychological pressure and it is submitted that both the Courts have not even considered the Social Background Report and in fact, as per the same, it had been stated that the petitioner is not a habitual offender and it had been recommended that the petitioner be released on bail under supervision and right guidance.

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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.

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

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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."*

As per the Section reproduced hereinabove, and the settled legal position with respect to the same, benefit of bail is a matter of right for a child in conflict with law and its denial thereof, is an exception.

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

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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 –

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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

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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

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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/Illaq Magistrate.”

A perusal of the above-said case would show that even where the allegation against the petitioner therein (Gurkirat @ Gora) was that he had given 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

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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

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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

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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.

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Even in the social inquiry conducted by the Probation Officer on Page 54 of the paper book, it is apparent that a recommendation has been made that after considering all the facts of the case, the petitioner did not seem to be a habitual offender and, thus, he could be released on bail under supervision and right guidance. The said aspect has not been considered by the Board/Court below. Even the facts that the petitioner was a juvenile and has been in custody since 01.07.2020 and is not involved in any other case, have not been considered. Further, the fact that there are 26 witnesses, out of which 02 witnesses have been examined and thus, the trial is likely to take time moreso in view of the pandemic situation, and also the fact that the two star witnesses have not supported the case of the prosecution and have instead stated that it was not the present petitioner who was involved in the incident in question, has also not been taken into consideration by the Board/Court. It is only on the basis of

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presumption and assumption, that it has been submitted that the petitioner, if released, would be exposed to moral, physical and psychological danger and his release would not meet the ends of justice. It is, thus, apparent that in the present case neither the facts of the case, nor the law on the point has been considered in the right perspective.

Accordingly, the present revision petition is allowed and the impugned orders dated 05.11.2020 and 15.10.2020 are set aside and the petitioner is ordered to be released on bail, subject to his furnishing bail/surety bonds to the satisfaction of the concerned trial Court/Duty Magistrate/Illaq Magistrate and subject to his not being required in any other case.

However, nothing stated above shall be construed as a final 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 criminal revision petition.

Since the main petition has been decided, pending miscellaneous application shall also stand disposed of.

(VIKAS BAHL)
JUDGE

December 02, 2021.

sandeep

Whether speaking/reasoned:-

Yes/No

Whether Reportable:-

Yes/No