

CRR-1474-2021 (O&M)

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

(216)

CRR-1474-2021 (O&M).
Date of Decision:-29.11.2021.

Bhanu Sharma @ Dhilu

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Vimal Kumar Gupta, Advocate for the petitioner.

Mr. Manish Dadwal, AAG, Haryana.

VIKAS BAHL, J. (Oral)

Prayer in the Criminal Revision is for setting aside the order dated 17.09.2021 passed by the Principal Magistrate, Juvenile Justice Board, Gurugram in BA/613/2021, vide which the regular bail application of the petitioner in FIR No.1027 dated 28.05.2020, under Sections 148, 149, 302, 120-B of IPC, 1860 and Sections 25, (1B) (a), 27 (1) of Arms Act, registered at Police Station Shivaji Nagar, Gurugram, has been dismissed and also for setting aside the order dated 25.10.2021 passed by the Additional Sessions, Gurugram, vide which, the appeal filed by the petitioner has also been dismissed.

The case of the prosecution is that one Ram Gopal S/o Shri Krishan had given a statement that he, along with his wife Kamla and son Mannan @Mannu and daughter Shivani resides on rental basis in Gali No.16 Nayi Basti, Gurgaon in front of the house of one Ramesh Kataria. It is further

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the case of the complainant-Ram Gopal that on 28.05.2020, when he had gone to Sadar Bazar, Gurugram at about 05.30 PM, his daughter Shivani had called up on his mobile phone and stated that Mannan @ Mannu had been shot and when he reached the Medanta Hospital, Gurugram, he found out that his son had died. Further, the case of the prosecution is that Mannan @ Mannu was friends with Sanchit Tripathi S/o Vinay Tripathi. The said Sanchit Tripathi was romantically involved with a girl named Sneha and, due to this, one Dushyant (co-accused) had ill-feelings towards Sanchit Tripathi and as such Dushyant used to warn Mannan @ Mannu and used to stop him from supporting Sanchit Tripathi and threatened him with dire consequences in case he does not do so. It is the case of prosecution that on 28.05.2020 when Mannan @ Mannu had gone to the shop of his friend Shivam, then Dushyant along with Hanni, Rahul, Bhanu @ Dhillu, Manish and two more boys came on an Activa and on a bike and Dhillu fired at Mannan @ Mannu.

Learned counsel for the petitioner has submitted that in the present case, the petitioner has been in custody since 29.05.2020 and is not involved in any other case and the challan in the present case has already been filed and there are as many as 28 witnesses and none of them have been examined and, thus, the trial is likely to take time. It has further been argued by the learned counsel that as per the provisions of Section 18 of the Juvenile Justice (Care & Protection of Children) Act, 2015 (for short 'the Act of 2015'), the maximum period for which the petitioner could be kept in a Special Home is three years and that he has already undergone more than 1 year, 05 months and 29 days in custody. 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. It has been further submitted that both the Courts below have fallen in grave error in

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not considering the fact that the case of the present petitioner does not even remotely fall within the three reasons/circumstances mentioned under the Act of 2015 as per which the bail of the petitioner could be refused.

It is further pointed out that Social Background Report has not been referred to in the impugned orders so as to bring the case of the petitioner within the exceptions stipulated under Section 12 of the Act of 2015. It is submitted that solely on the basis of the fact that Annu, who was a co-accused had been shot by Shivam, who belonged to the complainant party, the bail application of the petitioner has been rejected. It is submitted that in fact another co-accused i.e., Hanni, who was also a juvenile, has been granted bail under Section 12 of the Act of 2015 by Juvenile Justice Board, Gurugram vide order dated 26.08.2021 and no harm has been caused to him thereupon. It is further submitted that in fact one of the persons belonging to the complainant party has already died and another Shivam, has already been arrested and, thus, the petitioner has no apprehension to his life and liberty. Learned counsel for the petitioner on instructions from the family of the petitioner has submitted that they would be pursuing the present application for bail.

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, on instructions from SHO Parveen Kumar, has submitted that the orders passed by the Courts below are correct and the present petition deserves to be dismissed. It is

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further submitted that the in the present case, the petitioner is the main accused inasmuch as he is the one who had fired at the deceased and even the recovery of the country-made pistol has been made from the deceased. It is further submitted that the material witnesses are yet to be examined, and, thus, there is likelihood of the petitioner threatening the said witnesses in case he is released on bail. It is also submitted that the case of the petitioner, on account of death of Annu, would fall within the proviso to Section 12 of the Act of 2015 and his release would defeat the ends of justice.

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.

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."*

It has been correctly observed in para 7 of the order of the learned Principal Magistrate, Juvenile Justice Board that benefit of bail is a matter of right for a child-in-conflict with law and denial thereof is an exception. In the background of the said settled legal position, the question as to whether the impugned orders rejecting the bail have been correctly passed or not, is further being considered.

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.

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."

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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/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 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.

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The above-said judgments would show that the gravity of the offence could not be a criteria to reject the bail application of the petitioner. The petitioner has been in custody since 29.05.2020 and the challan has already been presented in the present case and there are 28 witnesses, none of which have been examined as yet and, thus, the trial is likely to take time, moreso in view of the present pandemic. The impugned orders have been passed without there being any reference or consideration of the Social Background Report from the record. The primary ground taken in the impugned order is to the effect that Annu (co-accused) has been killed by Shivam, who belonged to the complainant party, after having been granted bail and the same cannot be taken as a ground to reject the bail application of the petitioner, moreso, keeping in view the period of custody and also the specific instructions of the learned counsel for the petitioner to the effect that there is no apprehension with respect to his life at the hands of the

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complainant party inasmuch as one of the persons of the complainant party has already died and another i.e., Shivam is in custody and also the fact that the other co-accused Hanni has also been released on regular bail vide order dated 26.08.2021 and the said Hanni has not been attacked by the complainant party. There is nothing on record, much less the Social Background Report, to even remotely suggest that the petitioner, if released on bail, would come into association with any known criminal or would expose himself to moral, physical or psychological danger or his release would defeat the ends of justice. Further, the petitioner is not involved in any other case and in case the present petition is dismissed and the petitioner is made to languish in custody for any further period, without having been convicted, the same would defeat the ends of justice.

Accordingly, the present criminal revision petition is allowed and impugned order dated 17.09.2021 passed by the Juvenile Justice Board, Gurugram as well as the order dated 25.10.2021 passed by the Additional Sessions Judge Gurugram, is 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/Illaq Magistrate and subject to him not being required in any other case.

The petitioner is further directed not to threaten/influence any of the witnesses and in case he is found to be indulged in the same, it would be open to the State to move an application for cancellation of his bail.

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, the pending

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miscellaneous application, if any, also stands disposed of.

(VIKAS BAHL)
JUDGE

November 29, 2021.

sandeep
Whether speaking/reasoned:-
Whether Reportable:-

Yes/No
Yes/No