

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

206

**CRR-198-2022(O&M)
Date of decision: 07.02.2022**

KALA @ BHIM SINGH

...Petitioner

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present : Mr. Neeraj Goel, Advocate
for the petitioner.

Mr. Kanwar Sanjiv Kumar, AAG Haryana.

VINOD S. BHARDWAJ. J. (ORAL)

This case has been taken up through Video Conferencing via Webex facility in the light of Pandemic Covid-19 situation and as per instructions.

2. Instant revision petition has been preferred against the order dated 21.12.2020 (Annexure P-3) passed by the Principal Magistrate, Juvenile Justice Board, Kaithal declining the application of the Child in conflict with law under Section 12 of the Juvenile Justice (Care and Protection of Children) Act 2015 and the order dated 13.01.2021, passed by the Court of learned Sessions Judge, Kaithal in appeal.

3. Learned counsel for the petitioner has referred to the order passed by the Principal Magistrate, Juvenile Justice Board, Kaithal and to the averments made by the Assistant Public Prosecutor, wherein, it is acknowledged by the State that there is no material on record to show that the release of child in conflict with law or is likely to bring them into association with any known-criminal or to expose them to moral, physical or psychological danger and then to submit that their release would defeat the ends of justice, as the children in conflict with law

have been involved in the offence with other hardened criminals. By placing reliance on the same, it has been submitted that the application for release of the child in conflict has been rejected ignoring the mandate of Section 12 of Juvenile Justice(Care and Protection of Children) Act, 2015.

4. It is further contended that the petitioner has been in custody since November, 2020 despite being declared a juvenile under Section 12 of the Act of 2015. It is further submitted on merits that as per the allegations borne out from the FIR, four persons were alleged to have attacked the complainant and snatched his motorcycle. One person showed pistol to the complainant and also took away his phone. It is alleged that recovery of the pistol has been effected from the co-accused and not from the petitioner and further that only a mobile phone has been shown to be recovered from the petitioner. However, there is nothing to link the mobile phone to that of the complainant, since the person with pistol is alleged to have snatched the phone.

5. The petition has been opposed by learned State counsel by making a reference to the observation recorded in the order by the learned Lower Appellate Court and to argue that co-accused Monu was armed with a pistol and the petitioner had actively participated in the commission of offence by causing injuries to the victim. It is further argued that there is nothing to assume innocence on the part of the petitioner and that he does not seem to be novice and ignorant of ground realities and should thus be shown no leniency.

6. I have heard learned counsel for the parties and have gone through the impugned orders.

7. A perusal of the FIR shows that as per the allegation levelled, the person who was brandishing pistol is alleged to have taken the mobile. The prosecution has not disputed that the pistol in question was recovered from co-

accused Monu. Hence, *prima facie* the allegation would suggest that the mobile handset in question was snatched by co-accused Monu himself.

8. Learned State counsel has further not been able to reflect to any evidence to establish that the mobile handset recovered from the petitioner happens to be the handset snatched from the complainant on the basis of investigation conducted.

9. The Juvenile Justice (Care and Protection of Children) Act, 2015 was enacted to amend the law relating to children alleged and found to be in conflict with law and to protect the children in need of care by catering to their basic needs through proper care, protection, development, social reintegration by adopting a child friendly approach in the adjudication and disposal of the matter in the best interest of children.

10. Section 2(13) defines child in conflict with law and Chapter IV deals with the procedure in relation to children in conflict with law. Section 12, thereof deals with the provisions pertaining to bail to a child alleged to be in conflict with law. The relevant statutory provision are extracted as under:-

'Section 2(13):-

“child in conflict with law” means a child who is alleged or found to have committed an offence and who has not completed eighteen years of age on the date of commission of such offence;

Section 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 known-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.'

11. A perusal of the statutory provision shows that a child in conflict with law must be released on bail unless circumstances corroborate existence of reasonable grounds for forming a satisfaction that the release of the child in conflict with law is likely to bring that person into association with any known-criminals and/or expose the said person to moral, physical or psychological danger or would defeat the ends of justice.

12. The question as to what would form 'reasonable grounds' has been considered by the Hon'ble Supreme Court in the judgment '**Union of India through Narcotics Control Bureau, Lucknow Vs. Md. Nawaz Khan (2021) 10**

SCC 100' and it has explained circumstances when something may be termed as

reasonable. The relevant extract of the judgment is as under:-

'22. The standard prescribed for the grant of bail is 'reasonable ground to believe' that the person is not guilty of the offence. Interpreting the standard of 'reasonable grounds to believe', a two-judge Bench of this Court in Shiv Shanker Kesari (supra), held that: (SCC P.P.801-02, Paras 7-8 & 11) "7. The expression used in Section 37(1)(b)(ii) is "reasonable grounds". The expression means something more than prima facie grounds. It connotes substantial probable causes for believing that the accused is not guilty of the offence charged and this reasonable belief contemplated in turn points to existence of such facts and circumstances as are sufficient in themselves to justify recording of satisfaction that the accused is not guilty of the offence charged.

8. The word "reasonable" has in law the prima facie meaning of reasonable in regard to those circumstances of which the actor, called on to act reasonably, knows or ought to know. It is difficult to give an exact definition of the word "reasonable". "7. ... In Stroud's Judicial Dictionary, 4th Edn., p. 2258 states that it would be unreasonable to expect an exact definition of the word 'reasonable'. Reason varies in its conclusions according to the idiosyncrasy of the individual, and the times and circumstances in which he thinks. The reasoning which built up the old scholastic logic sounds now like the jingling of a child's toy."

[See Municipal Corpn. Of Delhi vs. Jagan Nath Ashok Kumar [(1987) 4 SCC 497] (SCC p. 504, para 7) and Gujarat Water Supply and Sewerage Board vs. Unique Erectors (Gujarat) (P) Ltd.]

10. The word "reasonable" signifies "in accordance with reason". In the ultimate analysis it is a question of fact, whether a particular act is reasonable or not depends on the circumstances in a given situation.(See Municipal Corpn. Of Greater Mumbai v. Kamla Mills Ltd. [(2003) 6 SCC 315]'

13. Further, the learned Courts below have observed that there is no vested right in a child in conflict with law to be enlarged on bail. The observation recorded by the Juvenile Justice Board as well as learned Sessions Judge do not find support from the precedent judgments of the Hon'ble Supreme Court, which has held in the matter of '**Re Exploitation of Children in Orphanages Vs. Union Of India And Others (2020) 14 SCC 327**' as under:-

'5. The Juvenile Justice (Care and Protection of Children) Act, 2015, (hereinafter referred to as "the Act") is a special enactment meant for protection of children. Section 10 of the act lays down that when any child alleged to be in conflict with law is apprehended by the police, such child should be placed under the charge of the special juvenile police unit or the designated Child Welfare Officer. Section 10 further provides that such authority should produce the child before the Juvenile Justice Board ("JJB"/"Board", for short) without any loss of time but not more than 24 hours after the child is apprehended. The proviso to the section clearly lays down that a child alleged to be in conflict with law shall not be placed in a police lock-up or lodged in a jail/

6. Once a child is produced before a JJB, bail is the rule. Section 12 of the Act reads as follows:

Section 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 known-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.'

7. Sub-Section (1) makes it absolutely clear that a child alleged to be in conflict with law should 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. The only embargo created is that in case the release of the child is likely to bring him into association with known criminals or expose the child to moral, physical or psychological danger or where the release of the child would defeat the ends of justice, then bail can be denied for reasons to be recorded in writing. Even if bail is not granted, the child cannot be kept in jail or police lock-up and has to be kept in an observation home or place of safety.

8. All JJBs in the country must follow the letter and spirit of the provisions of the Act. We make it clear that the JJBs are not meant to be silent spectators and pass order only when a matter comes before them. They can take note of the factual

situation if it comes to the knowledge of the JJBs that a child has been detained in prison or police lock-up. It is the duty of the JJBs to ensure that the child is immediately granted bail or sent to an observation home or a place of safety. The Act cannot be flouted by anybody, least of all the police.

9. The Registry is directed to send a copy of this order to the Registrars General of all the High Courts so that the order is placed before the Juvenile Justice Committee of each High Court who shall in turn ensure that the copy of this order is sent to the JJBs to ensure strict compliance of this order.

14 Further, this Court has in the matter of **Vishnu Vs. State of Haryana** in CRR No.233 of 2021 decided on 02.06.2021 held as under:-

'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, 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.'

15. Still further, this Court has held in **Axxx (Juvenile) Vs. State of Haryana** in CRR No.1005 of 20520 decided on 04.08.2020 that:-

'... in CRR No.808 of 2020 titled as 'Sahil alias Nannu Vs. State of Haryana' decided on 09.06.2020, held that a child in conflict with law should be released on bail notwithstanding anything contained in the Code of Criminal Procedure or any other law

for the time being in force except for any of the three contingencies specified in proviso to Section 12(1) of the Act i.e. (i) if there appears to be a reasonable ground for believing that the release of the juvenile is likely to bring him into association with any known criminal, or (ii) the release will expose the juvenile to moral, physical or psychological danger or (iii) his release would defeat the ends of justice. Reliance can further be placed in this regard upon judgment of this Court in CRR No.869 of 2020 titled as 'Manga Mann and another V. State of Punjab', decided on 21.05.2020.'

16. It shall further be relevant to refer to Chapter II of the Juvenile Justice Act, 2015, which deals with General Principle of Care and Protection of Children.

Section 3(i) of the Act is extracted as under:-

'3(i) Principle of presumption of innocence: Any child shall be presumed to be an innocent of any mala fide or criminal intent up to the age of eighteen years.'

17. A perusal of the aforesaid general principles to be followed, shows that there is a presumption of innocence under the statute. The observation recorded by the learned Sessions Judge, Kaithal in his order that *prima facie* there is no indication of any innocence on the part of the petitioner, thus runs contrary to the principle enshrined in the statute. The reasons cited for rejection of bail thus do not find support from the statute and the precedent judgments. Bail has been held to be a matter of Rule and rejection has to be for reasons in conformity with the statute. *Per contra*, Assistant Public Prosecutor rather acknowledged that there is no material to show that the release of the child in conflict with law is likely to bring him into association with any known-criminals or expose them to moral, physical and psychological danger. Besides, the social investigation report specifically stated that the child belongs to normal family and has normal relations with other members of the family. It is further stated in the said report that the

child is emotionally balanced and the cause of the problem arose on account of '*peer group influence*'. The said aspect of the report clearly establish that the child in conflict with law can be duly looked after by the family and there is nothing to imply that the child is habitual of being found in the company of hardened criminals. Besides, he has been in custody since November 2020.

18. In view of the above, the present revision petition is allowed and the order dated 21.12.2020 passed by the Principal Magistrate, Juvenile Justice Board, Kaithal as well as the order dated 13.01.2021 passed in Criminal Appeal No.1/2021 by the learned Sessions Judge, Kaithal are set aside.

19. The revision petition is allowed.

20. Without adverting to the merits of the case at this stage and considering the circumstances as well as the period of stay of the petitioner at the place of safety/observation home, the petitioner is ordered to be released on bail, subject to his furnishing bail bonds/surety bonds to the satisfaction of the Principal Magistrate, Juvenile Justice board/Chief Judicial Magistrate, Kaithal.

(VINOD S. BHARDWAJ)
JUDGE

February 07, 2022

S.Sharma(syr)

<i>Whether speaking/reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>