

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(103)

CRA-S-253-2022

Date of decision: - 17.02.2022

Ruksad

....Appellant

Versus

State of Haryana

.....Respondent

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Saurav Bhatia, Advocate,
for the appellant.

Mr. Manish Dadwal, AAG, Haryana.

Mr. Kamal Deep Sehra, Advocate
for the complainant.

VIKAS BAHL, J. (ORAL)

The challenge in the present appeal is to the order dated 29.04.2020, passed by the Additional Sessions Judge, Nuh, vide which the application for bail filed by the present appellant under Section 12 of Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred as "the Act"), in FIR No.148 of 2019, under Sections 148, 149, 323, 342, 506, 307 and 302 IPC, registered at Police Station Rozka Meo, District Nuh, has been dismissed.

Brief facts of the prosecution case are that the present FIR was registered on the basis of statement of complainant Kundan son of

Shrichand, resident of village Udaka, who had stated that, on 15.07.2019 a quarrel had taken place in their village between Jamshed son of Mamrez and Akthar son of Rustam; his nephew Naveen son of Mahavir was going to Sohna and Jamshed asked him for a lift and he then went to Sohna with Naveen and the said Jamshed had filed a complaint in the Police Station regarding the said quarrel. On 19.07.2019, a panchayat had been convened to resolve the dispute between Jamshed and Akthar, in which, a settlement had been arrived at and while Naveen was going back to his house, the complainant was accompanying him and on the way Maksudan-wife and Sarjina-daughter of Akthar picked up bricks from the roof of the house and threw the same on Naveen hitting him on the head. After being hit in the head, Naveen suffered a serious injury and meanwhile, Jekam son of Nashrudin dragged Naveen inside the house and bolted the door from inside. Thereafter Akthar, his wife, daughter and son Sajid gave beatings to Naveen in the house and when the complainant went to his rescue, then, Sajid, Akthar, Jekam, Sarjina and Maksudan hit him with stones and cricket bat and in the meanwhile, Ram Avtar brother and Satish son along with Nitesh and Prem came there and thereafter, Ruksar (present petitioner), Saikul, Sarjina, Maksudan, Sajid, Akthar had attacked them with lathies, dandas, cricket bat and stones and as a result, Naveen succumbed to the injuries and offence under Section 302 IPC was added. Thereafter, the present appellant had filed for bail under Section 12 of the Act, which was dismissed by the Additional Sessions Judge, Nuh.

Learned counsel for the appellant has submitted that even as

per the prosecution case, the appellant has not been attributed any specific injuries nor he is stated to be armed with any specific weapon and although, the recovery of stick (*danda*) is stated to have been made from the appellant, it is submitted that the dispute was between Jamshed and Akhtar and the injuries on the head of the deceased had been given by the co-accused, which had been specifically detailed in the prosecution version. It is also submitted that there are 11 accused and the present appellant has only been nominated on the pretext of being the son of Akhtar. It is argued that on the date of the alleged incident, the appellant was 16 years and 02 months of age. It is also submitted that Aamir (co-accused), who was an adult on the date of the incident, has already been granted regular bail, vide order dated 16.11.2021, by a Co-ordinate Bench of this Court, passed in CRM-M-35750-2020 and the said Aamir was in custody since 29.07.2019, whereas, the present appellant apart from being lesser than 18 years of age at the time of incidence, is in custody since 24.07.2019 and thus, the custody undergone by the present appellant is more than the custody of the said Aamir. It is submitted that there are 30 witnesses in all, out of which, 10 have been examined and although, 5 have been given up, 15 witnesses are yet to be examined. It is submitted that even in case the appellant was an adult, then also, on the basis of the custody period and on the ground that no specific role has been attributed to him, he deserves to be released on regular bail. It is also stated that at the time of passing of the impugned order, the Court had not even considered Section 12 of the Act and the general principle that the bail is a rule and not jail, and it is not even observed in the impugned order that

the case of the appellant is covered under the three exceptions as mentioned in Section 12 of the Act. It is also submitted that the appellant is not involved in any other case. Learned counsel for the appellant has also pointed out that earlier the appellant had filed a CRR-906-2021, in which, the preliminary objection had been taken by counsel for the complainant and on 18.11.2021, this Court was pleased to pass the following order : -

“This is a criminal revision petition filed against the order dated 29.04.2020 passed by the Additional Sessions Judge, Nuh, dismissing an application under Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (in short 'the Act') for regular bail to the petitioner.

At the very outset, learned counsel for the complainant has submitted that in fact in the present case, the present revision petition is not maintainable and only an appeal under Section 101(5) of the Act can be filed. It is further submitted that as per sub section (5) of 101 of the Act, any person aggrieved by an order of Children's Court has a right to file an appeal before the High Court and further reference has been made to sub section 20 of Section 2 of the Act, which is reproduced hereinbelow:-

“(20) “Children's Court” means a court established under the Commissions for Protection of Child Rights Act, 2005 (4 of 2006) or a Special Court under the Protection of Children from Sexual Offences Act, 2012 (32 of 2012), wherever existing and where such courts have not been designated, the Court of Sessions having jurisdiction to try offences under the Act.”

It is submitted that the impugned order has been passed keeping in view the said provision and thus only an appeal would lie under Section 101(5) of the Act and once there is specific provision of appeal then the residual provision of criminal revision would not apply.

Learned counsel for the petitioner, in view of the objection

taken by learned counsel for the complainant, submits that the petitioner be permitted to withdraw the present petition with liberty to file an appeal under Section 101(5) of the Act.

In view of the said statement made by learned counsel for the petitioner, the present petition is dismissed as withdrawn, with liberty aforesaid.”

In pursuance of the same, the appellant has now filed the present appeal in accordance with law.

Learned State counsel as well as counsel appearing on behalf of the complainant has opposed the present appeal. It is submitted that on account of the act of the appellant, along with the other co-accused, death of Naveen has been caused. It is also submitted that the impugned order has been passed in accordance with law and deserves to be upheld.

This Court has heard learned counsel for the parties and perused the paperbook.

It is relevant to take note of Section 12 of the Act of 2015 and the same 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."*

A perusal of the above Section 12 of the Act would show that bail is the rule and not jail, in a case of juvenile and the same is to be refused only in case Court comes to the conclusion on the basis of material that the case is covered under three exceptions as mentioned in Section 12 of the Act.

A Co-ordinate Bench of this Court in CRR-1019-2020 passed in "***Gurkirat @ Gora Versus State of Haryana***" has held as under:-

"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 waylaid 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.

xxx xxx xxx

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.”

xxx xxx xxx

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.

xxx xxx xxx

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/Ilaqa Magistrate.”

A perusal of the above-said case would show that even where the allegation against the petitioner therein (Gurkirat @ Gora) was that he gave 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 bloodstained 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 co-accused were apprehended on 28.05.2020 and they admitted their involvement in the homicide in their disclosure statement.

xxx xxx xxx

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.

xxx xxx xxx

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 inforce, 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.”

A Coordinate Bench of this Court in case titled as “**Sanjit vs. State of Haryana**”, in CRR-962-2020 decided on 02.07.2020 has observed as under:-

“A bare reading of the provision reproduced herein would make it apparent that an exception has been carved out for declining the bail to the juvenile who is in conflict with law i.e. he or she is likely to come in association with any known criminal or upon release on bail would expose such juvenile to moral, physical or psychological danger or that release of the juvenile would defeat the ends of justice. For invoking such exception, there has to be some material before the

competent authority on the basis of which it can be held that the release of the juvenile in the present case would fall within the exception recognized under Section 12 of the Act. The impugned order dated 13.5.2020 passed by the Appellate Court at Annexure P-1 is completely bereft of any such reasoning. No such material/evidence has been adverted to in the order. Seriousness of the offence as mentioned in the FIR would not be a ground to deny to the juvenile the concession of bail in the light of Section 12 of the Act.”

Perusal of the above-said judgment would show that in an application under Section 12 of the Act, bail is the rule and only in case the appellant is covered under any one of the exceptions, as mentioned in Section 12 of the Act that the bail application can be rejected.

Perusal of the impugned order would show that the said provisions of Section 12 of the Act had not even been considered and it was not even remotely observed therein that the case of the appellant is covered by any one of the exceptions. The appellant was 16 years and 2 months of age on the date of the alleged incident. A perusal of the prosecution version would show that there are 11 accused and although, specific injury had been attributed to some of the accused, but no specific injury or specific role had been attributed to the present appellant. The appellant has been in custody since 24.07.2019 and there are as many as 30 witnesses, out of which, 15 witnesses are yet to be examined and thus, the trial is likely to take long time, moreso, in view of the present pandemic. Even co-accused Aamir, who was an adult on the date of the alleged incident, has already been granted regular bail by a Co-ordinate Bench of this Court, vide order dated 16.11.2021 passed in CRM-M-35750-2020 and his custody period was lesser than the custody of the

present appellant.

Keeping in view the above-said facts and circumstances, the present appeal is allowed and the impugned order dated 29.04.2020, passed by the Additional Sessions Judge, Nuh, is set aside and the appellant is directed to be released on bail subject to his furnishing bail / surety bonds to the satisfaction of the concerned trial Court /Duty Magistrate / Illaqa 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 Court would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail petition.

February 17, 2022
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	Yes