

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

CRR-612-2022 (O&M)
Reserved On: 11.11.2022
Pronounced on: 15.11.2022

Rinku

....Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Shivansh Malik, Advocate, for the petitioner.
Mr. Gagandeep Singh Chhina, AAG Haryana.

HARNARESH SINGH GILL, J.

Challenge in the present petition is to the order dated 11.03.2022 passed by learned Addl. Sessions Judge, POCSO Court, Rohtak, whereby appeal filed by the petitioner against the order dated 14.02.2022 passed by learned Principal Magistrate, Juvenile Justice Board, Rohtak, dismissing the bail application of the petitioner (child-in-conflict with law), was dismissed.

Learned counsel for the petitioner submits that the petitioner was a juvenile on the date of the alleged occurrence i.e. 16.10.2021; that date of birth of the petitioner is 26.10.2004, as such he was less than 17 years of age on the relevant date; and that the petitioner ought to have been dealt with under Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short 'the Act'). He further submits that the alleged occurrence took place on 16.10.2021, whereas the FIR was registered on 17.10.2021 and that the petitioner had

been named by two injured persons, namely, Sonu and Sumit in their statements recorded under Section 161 Cr.P.C. on 20.10.2021. Still further it is submitted that Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short 'the Act') prescribes three circumstances under which the bail application of the child in conflict under law, could be dismissed and that none of the said circumstances, was attracted in the case of the petitioner and as such, denial of bail to the petitioner is legally untenable.

He further submits that the Courts below have not considered the entitlement of the petitioner in terms of Section 12 of the Act, which could not have been overlooked even in the situation that he was sent up to face trial by the Juvenile Justice Board in Children's Court and that the similarly situated co-accused Vikas, has already been granted the concession of bail.

In support of his contentions, the learned counsel for the petitioner relies upon the judgment rendered by a Coordinate Bench in 'Harwinderjit Singh Vs. State of Punjab, 2021(4) RCR(Criminal) 62.

On the other hand, learned State counsel, while opposing the prayer made in the petition submits that the petitioner has specifically been named by the two injured persons in their statements recorded under Section 161 Cr.P.C. with serious allegations. He further submits that the petitioner gave a fatal blow on the head of the deceased, with a wooden baton, which was recovered from him, in a broken condition.

I have heard the learned counsel for the parties.

There is no denying the fact that as on the date of occurrence, the petitioner was juvenile. Thus, while dealing with the bail petition of the petitioner, the mandate of Section 12 of the Act, is required to be followed. Section 12 of the Act would read as under:-

“12. (1) 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 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. Apprehension of child alleged to be in conflict with law. Role of person in whose charge child in conflict with law is placed.”

A perusal thereof would show that the conditions for denial of the bail to the juvenile are stipulated under the proviso

to Section 12(1) of the Act. As per the status report, there are total 6 accused in the case and all of them are in custody, except juvenile Vikas. Thus, the first condition that if released on bail, the petitioner may come into contact with the known criminal is not attracted. The reasoning given by the Juvenile Justice Board was that if released on bail, the petitioner would be exposed to moral, physical and psychological danger, whereas the appellate Court has rejected the appeal of the petitioner on the ground that the Board is yet to make a preliminary assessment as whether the petitioner is to be treated as an adult.

Be that as it may, the fact remains that the objective of Section 12 of the Act, is reformatory in nature. There is no material or circumstance on record to hold that if released on bail, the petitioner would come into contact with the known criminals. The reasoning of the Board that it would expose the petitioner to the psychological danger does also not seem to be emanating from the given circumstances. The FIR was registered on 17.10.2021 and the petitioner has been in protective custody since 19.10.2021.

In view of the above, the present petition is allowed. The orders passed by the Courts below, qua denying the petitioner regular bail, are set aside. The petitioner is ordered to be released on bail to the satisfaction of the learned trial Court/Duty Magistrate.

15.11.2022
ds

(HARNARESH SINGH GILL)
JUDGE

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

