

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

CRR No.802 of 2022

Date of Decision: 20.12.2022

XXXXXXXXXX

..... Petitioner

versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Vaibhav Narang, Advocate
for the petitioner.

Mr. Kunal Vinayak, AAG, Punjab.

JASGURPREET SINGH PURI J. (ORAL)

The present revision petition has been filed by the petitioner-juvenile, who is stated to be of the age of 15 years, 06 months and 15 days at the time of alleged occurrence, challenging the order dated 01.12.2021 passed by the learned Principal Magistrate Juvenile Justice Board, Amritsar whereby the bail application filed by the petitioner has been dismissed and also the judgment dated 02.03.2022 passed by the learned Appellate Court whereby the appeal has also been dismissed.

As per the allegations contained in the FIR, the police party received an information with regard to the illegal drug peddling pertaining to heroin and on the basis of the information, the police party raided a place from where there was recovery of 16 packets of heroin weighing 16 Kgs 820 gms of heroin from one Ranjit Singh @ Rana. Thereafter, further investigation was conducted by the police and the aforesaid

co-accused made various disclosure statements, on the basis of which, the brother of the petitioner, namely, Sikander Hayat and some other persons were also nominated. Thereafter, name of the petitioner was nominated on the basis of a disclosure statement of the aforesaid Sikander Hayat, who himself was nominated on the basis of the disclosure statement of the main accused namely, Ranjit Singh @ Rana, who was apprehended along with heroin. Thereafter, on the basis of further disclosure statements, heroin of 4 kg was also confiscated from one Innova Car on the basis of statement made by the aforesaid Sikander Hayat and allegedly by the petitioner. The petitioner, being juvenile and especially below the age of 16 years at the time of occurrence, has been subjected to an inquiry by the learned Juvenile Justice Board, Amritsar.

Learned counsel appearing on behalf of the petitioner has submitted that the petitioner-juvenile, who is child in conflict with law, has undergone about 01 year and 04 months and as per the provisions of Section 18 of the Juvenile Justice Act, 2015, the maximum time for which he can be sent to a special home even after the completion of the inquiry is 03 years for reformatory purposes, etc. He submitted that almost half of the total maximum period has been exhausted by the petitioner-juvenile, since he has undergone 01 year and 04 months approximately. He further submitted that even otherwise also on merits, the allegation against the petitioner, who was of a tender age, was that he helped his brother namely, Sikander Hayat and provided information to the police, on the basis of which, there was a recovery of 04 kgs of heroin from one Innova car. He submitted that since it was a case under Juvenile Justice Act, 2015,

when the Social Investigation Report was called for, it was found that the petitioner has chosen this path because of neglect by his parents and bad company of his brother namely, Sikander Hayat. However, the aforesaid Sikander Hayat, who is an adult, is being tried separately by the learned Judge Special Court under the NDPS Act and he is already in custody.

Learned counsel for the petitioner submitted that both the learned Juvenile Justice Board as well as the learned Appellate Court have not applied the provisions of Section 12 of the Juvenile Justice Act, 2015 in its true perspective. He further submitted that a perusal of the orders would show that the only reason which has been given was that the petitioner should be denied bail because his Social Investigation Report says that he was neglected by his parents and was in the bad company of his brother, whereas in fact there was no bad precedent of the petitioner and he is not a habitual offender and is not involved in any other case. So far as the bad company of brother namely, Sikander Hayat is concerned, the same cannot become a ground for making the case fall within the proviso of Section 12 of the Juvenile Justice Act. He also submitted that for a juvenile, who is child in conflict with law, bail is a rule whereas exception is provided under the proviso to Section 12 of the Juvenile Justice Act. While referring to the proviso to Section 12 of the Act, he submitted that a child in conflict with law should not be released on bail, 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 should record the reasons for denying the bail which led to such decision.

Learned counsel for the petitioner further submitted that the brother of petitioner, namely, Sikander Hayat, is already in custody and the reasoning given by the Juvenile Justice Board and the learned Appellate Court is, therefore, without any basis because the petitioner is not stated to be with the company of any other person or any hardcore criminal. He has further submitted that there are total 26 witnesses in the present case, wherein the petitioner has been tried as a juvenile by the Juvenile Justice Board, but till date, not even a single witness has been examined and therefore, considering the total custody period of the present petitioner, he may be considered for the grant of regular bail.

On the other hand, Mr. Kunal Vinayak, AAG, Punjab has submitted that it is correct that the petitioner being a juvenile was of the age of 15 years and 06 months at the time of the occurrence, is in custody for about 01 year and 04 months and he is not a habitual offender and not involved in any other case. He further submitted that it is also correct that as per the Social Investigation Report, the petitioner was in the bad company of his brother and there was an element of parental neglect. He submitted that apart from the above, since the quantity involved in the present case is about 21 kgs of heroin, the petitioner does not deserve the concession of bail.

I have heard learned counsel for the parties.

It is a case where the petitioner, who is a child in conflict with law and was of the age of 15 years, 06 months and 15 days at the time of

occurrence, is being tried by the Juvenile Justice Board. He has already faced incarceration for 01 year and 04 months and as per the learned counsel for the parties, out of 26 cited witnesses, no witness has been examined till date. Even as per the prosecution and the affidavit filed by the State in the present case, the role of the petitioner was with regard to giving an information to the police along with his brother that the heroin of 04 kgs was kept in Innova car from where the recovery was made. However, even as per the affidavit filed by the State, no recovery has been effected from the petitioner. The law with regard to the bail to a juvenile, who is a child in conflict with law, is governed by Section 12 of the Juvenile Justice Act, 2015. Ordinarily, a juvenile, who is a child in conflict with law, should be granted bail as a matter of general rule subject to the condition that if the case falls within the proviso to the aforesaid Section 12 of the Act, then bail can be denied in exceptional circumstances and in case the parameters contained in the proviso are fulfilled.

In the present case, the petitioner has been denied bail by the learned Juvenile Justice Board as well as by the learned Appellate Court only on the ground that as per the Investigation Report, he was in the bad company of his brother and there was a neglect by his parents. However, the brother of the petitioner is already in custody and the petitioner is not a habitual offender and is not involved in any other case. He has already faced incarceration for about 01 year and 04 months, and is being tried as a juvenile by the Juvenile Justice Board.

Therefore, this Court is of the considered view that considering the aforesaid totality of circumstances pertaining to the alleged role of the petitioner, the total custody of the petitioner and the fact that the case of the petitioner does not fall under the proviso to Section 12 of the Juvenile Justice Act, the petitioner deserves the concession of bail.

In view of the aforesaid facts and circumstances, the present petition is allowed. The order dated 01.12.2021 passed by the learned Principal Magistrate Juvenile Justice Board, Amritsar as well as the judgment dated 02.03.2022 passed by the learned Additional Sessions Judge, Amritsar, are hereby set aside and are quashed. The petitioner, who is child in conflict with law, shall be released on bail to the satisfaction of the Ld. Principal Magistrate, Juvenile Justice Board, Amritsar/Duty Magistrate of the concerned area.

However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is only meant for the purpose of decision of present petition.

(JASGURPREET SINGH PURI)
JUDGE

20.12.2022

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