

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

212

CRM-M-17812-2022

Date of decision: 10.08.2022

GAURAV

.....Petitioner

Versus

STATE OF HARYANA

.....Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present : Mr. S.K.Jindal, Advocate
for the petitioner.

Mr. Tanuj Sharma, AAG, Haryana.

SURESHWAR THAKUR, J. (ORAL)

1. The instant petition has been filed under Section 439 of Cr.P.C., wherein, the petitioner craves for indulgence of regular bail becoming granted to him, in respect of FIR No. 277 dated 28.11.2020 registered at Police Station P.G.I.M.S., Rohtak, wherein offences constituted under Sections 147, 149 and 302 of the IPC, are embodied.

2. The present petitioner is a juvenile in conflict with law, and, is alleged to be a part of a unlawful assembly, and, besides that he alleged to with a user of *sua* inflict lethal wounds on the person of the deceased.

3. However, the adult accused have been stated, at the bar, by the learned State counsel, on instructions given to him, by S.I. Raj Kumar, to become admitted to regular bail, through verdicts drawn by jurisdictionally empowered Courts.

4. Nonetheless, the learned State counsel submits, that the incriminatory role, as assigned to the present bail petitioner, is more heinous, and, more grave, than as becomes assigned to the adult accused, inasmuch as, the lethal wound becoming inflicted on the victim/deceased, rather by the present bail petitioner.

5. However, the learned State counsel also submits, that the recovery of the *sua* has been effected by the present bail petitioner, to the investigating officer concerned.

6. Be that as it may, the relevant provisions, as, carried in Section 12 of the Juvenile Justice Act (for short hereinafter call 'the Act') are extracted hereinafter.

“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 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.

(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. A perusal of the afore provisions reveals, that the Juvenile Justice Board, (for short hereinafter called 'the Board'), becoming empowered to admit to bail, a juvenile in conflict with law, and, his admission to bail being with or without surety. However, the alternative thereto statutory privilege also becomes assigned to the juvenile in conflict with law, inasmuch as, the Board, if it deems it fit, to not admit the juvenile in conflict with law, to bail, with or without surety, to then order for his being placed under the supervision of a probation officer or under the care of any fit person.

8. The import of a combined reading of sub Section (1) of Section 12 of 'the Act', with the proviso thereunderneath, is that, they have a deep legislative holistic intent, hence of saving the child from becoming exposed to moral, physical, or, psychological danger, especially when, upon, his judicial incarceration becoming prolonged, he would, necessarily then, remain in the company of hardened criminals, and, obviously, when then his psyche, or, mindset would lean towards criminality, than towards his reformation, thereupon, the judicial incarceration of the juvenile in conflict with law, would definitely whittle down the above holistic intent of a child beneficent legislation. In addition, the above rather than subserving the above intent would cause its becoming rendered redundant. Moreover, it is in the above context that even if, on the report, of the social investigator

concerned, there is an echoing, that in case, he is admitted to bail with or without sureties, that hence he would be brought in association of known criminals, and, would also become exposed to moral, physical or psychological danger, that yet an empowerment, is reserved, to 'the Board', or, to the Court, to rather in the above situation, place a juvenile in conflict with law, under the supervision of a probation officer, or, under the care of any fit person, and obviously, never in the above provision, there is any express expression, or, any implied expression, qua the juvenile in conflict with law, being not ever released from judicial custody, where as above stated, he would be in the company of known criminals, and, where his psyche would also become exposed to physical, moral, and, psychological endangerments, and, also hence he would become precluded to reform himself.

9. However, neither 'the Board', nor, the learned Additional Sessions Judge, Rohtak, either considered, nor, determined the above holistic statutory contemplations, and, both proceeded to obviously, without the deepest application of judicial mind, to the salutary legislative purpose, behind the above statutory contemplations, as, carried in sub Section (1) of Section 12 of 'the Act', and, in the proviso thereunderneath, rather in a short haste, perfunctory manner, reject the claim of the present bail petitioner, for his becoming released in the mode(s) as deemed fit.

10. In consequence, the orders recorded on the bail application, both by the Juvenile Justice Board, Rohtak, and, by the Additional Sessions Judge, Rohtak are quashed, and, set aside, and, the apposite application is remanded to the learned Additional Sessions

Judge, Rohtak, to after his abiding with the mandate carried in sub Section (1) of Section 12 of the Act, and, also to the mandate of the proviso thereunderneath, to make a fresh decision, in accordance with law, upon the apposite application.

11. The learned Additional Sessions Judge, Rohtak shall positively within three weeks from today, make the afore decision, in accordance with law, on the apposite application.

12. Disposed of accordingly.

10.08.2022
kavneet singh

(SURESHWAR THAKUR)
JUDGE

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