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

CRR-1124-2021

Date of Decision: 11.05.2022

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..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Rahul Sharma-I, Advocate,
for the petitioner.

Ms. Shivani Sharma, AAG, Haryana.

JASGURPREET SINGH PURI, J. (ORAL)

The present revision petition has been filed by the petitioner challenging the order dated 31.08.2021 passed by the Juvenile Justice Board, Gurugram and also the order dated 14.09.2021 passed by the learned Appellate Court whereby the bail application filed by the petitioner has been dismissed.

It has been submitted by learned counsel for the petitioner that the petitioner is a juvenile and is being tried by Juvenile Justice Board and he is in custody since 12.06.2020 which is almost 1 year and 11 months. He further submitted that as per the allegations one Sanjeev was kidnapped by two persons, namely, Jony and Mony, and thereafter, it was found that the aforesaid Sanjeev was killed and even as per the prosecution, the name of the petitioner was nominated on the basis of the disclosure statement made by the co-accused, namely, Jony. He submitted that as per the prosecution story the

role attributed to the petitioner was only that he had conspired with the aforesaid Jony and Mony and there is no specific role attributed to the petitioner that he has inflicted any injury to the deceased or that he was even present at the spot and he had been implicated only on the ground of conspiracy. He also submitted that when the Social Investigation Report was called by the learned Juvenile Justice Board then it was stated in the aforesaid report vide Annexure P-4 that the petitioner had bad company and various other factors had been mentioned but a perusal of the same would show that it was only vague with regard to the bad company of the petitioner. Further, it does not say anywhere that as to whether the petitioner was having a company of any known or hard core criminal or such type of person and at that point of time when the petitioner was nominated in the present case he was not involved in any case and had got clean antecedents. He further submitted that the petitioner was earlier implicated in some other case and it was only because of the false implication in that case that the name has been nominated by the Police and stated to have been nominated on the basis of disclosure statement made by the co-accused. He also submitted that the aforesaid other case i.e. FIR No.679, dated 30.09.2019, registered under Sections 302, 120-B, 201 and 34 of the IPC and Section 25 of the Arms Act, 1959 at Police Station Sector-7, Faridabad, the petitioner has already been extended the benefit of regular bail by a co-ordinate Bench of this Court vide Annexure P-2 after considering position with regard to the Social Investigation Report and the provision of Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as 'J.J. Act'). He also submitted that be that as it may, the petitioner is already in custody for about 1 year and

11 months and therefore, in view of the aforesaid facts and circumstances, the petitioner is entitled for the grant of regular bail especially in view of the provisions contained under Section 12 of the J.J. Act. He further submitted that rather the petitioner has a right to be granted bail under Section 12 of the J.J. Act because there is nothing on the record to suggest that the petitioner was in the company of any hardcore criminal or that he was involved in some other hardcore criminal activities.

On the other hand, Ms. Shivani Sharma, learned AAG, Haryana has stated that it is correct that the petitioner is in custody from 1 year and 11 months and he is being tried by the Juvenile Justice Board. She further submitted that it is also correct that the petitioner is on bail in other case.

I have heard the learned counsel for the parties.

A child conflict in law is granted statutory protection under Section 12 of the J.J. Act. Ordinarily bail is required to be granted but it is only in exceptional circumstances that bail can be refused when the Court/Board has to satisfy itself that the accused would not be entitled for grant of bail due to special and extreme circumstances. In the present case, the bail application of the petitioner has been rejected by the Juvenile Justice Board and affirmed by the learned Appellate Court but no such extreme factors have been discussed. Section 12 of the J.J. Act is reproduced as under :-

“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 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 decision.”

On the face of it does not suggest that as to how the petitioner can be termed as being in company with any hardcore criminal etc. It was only the brief history of the petitioner which has been mentioned in the aforesaid report. Be that as it may, the petitioner is already in custody for about 1 year and 11 months and therefore, this Court is of the view that the orders passed by the learned Juvenile Justice Board as well as the learned Appellate Court cannot be sustained in the light of Section 12 of the J.J. Act. No strong and cogent reasons have been mentioned as to how the petitioner comes within the exceptions as contained under Section 12 of the J.J. Act. The petitioner has also been granted regular bail in other FIR No.679, dated 30.09.2019 by a co-ordinate Bench of this Court vide Annexure P-2. This Court is of the view that the order passed by the learned Juvenile Justice Board as well as by the learned Appellate Court are liable to be set aside in view of the aforesaid facts and circumstances.

In view of the above, the present revision petition is allowed after setting aside the order dated 31.08.2021 passed by the Juvenile Justice Board,

Gurugram and also the order dated 14.09.2021 passed by the learned Appellate Court, and the petitioner is directed to be released on bail to the satisfaction of the Ld. Principal Magistrate, Juvenile Justice Board, Gurugram/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.

11.05.2022

Bhumika

(JASGURPREET SINGH PURI)
JUDGE

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| 1. Whether speaking/reasoned: | Yes |
| 2. Whether reportable: | Yes |