

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR No.1163-2021 (O&M)
Reserved on :10.11.2021
Pronounced on : February 07, 2022

Harmanpreet Singh @ Dana ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA
Present: Mr. Amit Arora, Advocate for the petitioner.
Mr. Sidakmeet Singh Sandhu, AAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
109	28.07.2020	Chohla Sahib	302/34 IPC

Criminal Case no. before trial Court	CIS No.CRM333/2021
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Aggrieved by the dismissal of his bail under section 12 of Juvenile Justice (Care and Protection of Children) Act 2015 a juvenile (conflict with law) came up before this court by filing revision against the order of appellate Court dated 14.09.2021, seeking bail.

- The petitioner had filed a bail application before the Principal Magistrate Juvenile Justice Board, Tarn Taran, which was dismissed on 15.06.2021.
- In paragraph 16 of the petition, it is declared that the accused has no criminal antecedents.
- Ld. Counsel for the petitioner contends that the pre-trial incarceration would cause an irreversible injustice to the juvenile petitioner and family.
- The contention on behalf of the State is that offence is heinous and bail encourages criminals.

REASONING:

- The petitioner apart from being a minor, is a first offender, and one of the

relevant factors would be to provide an opportunity to course-correct. Even a prima facie perusal of paragraph 11 of the bail petition needs consideration for bail.

7. In Vishvas v. State of Punjab, CRR No.53 of 2021, decided on 8.2.2021, Id. single bench of this Court held as follows:

[7]. From a bare reading of the provisions of Section 12 of the J.J. Act, it appears that 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 bail can be declined only in such cases where reasonable grounds are there for believing that the release is likely to bring the juvenile into association of any known criminal or expose him to moral, physical or psychological danger, or that his release would defeat the ends of justice. Meaning thereby, as per aforesaid provision, a juvenile can be denied the concession of bail, if any of the three contingencies specified under Section 12 (1) of the J.J. Act is available. Similar view was observed in cases *Manoj Singh v. State of Rajasthan* 2004(2) RCC 995, *Lal Chand v. State of Rajasthan* 2006(1) RCC 167, *Prakash v. State of Rajasthan* 2006(2) RCR (Criminal) 530 and *Udaibhan Singh alias Bablu Singh v. State of Rajasthan* 2005(4) Crimes 649.

[15]. According to Section 13 (1) (ii) of the J.J. Act, 2015, the Probation Officer has to be informed as soon as the child is apprehended and to prepare a social investigation report. The J.J. Board calls for a Social Investigation Report, which has been defined in Rule 2 (xvii) of the Juvenile Justice (Care and Protection of Children) Model Rules, 2016. This report becomes vital for the inquiry to be done by the Board while passing such orders in relation to such child as it deems fit under sections 17 and 18 of this Act. The purpose behind this provision is to enable the J.J. Board to get a glimpse of the social circumstances of the child, before any order regarding bail or of any other nature is passed. The Juvenile Justice (Care and Protection of Children) Model Rules, 2016 contain a detailed pro forma of the Social Investigation Report. The report has three parts; the first part requires the Probation Officer to give the data or information regarding the close relatives in the family, delinquency records of the family, social and economic status, ethical code of the family, attitude towards religion, relationship amongst the family members, relationship with the parents, living conditions etc. Thereafter, the report requires the Probation Officer to provide the child's history regarding his mental condition, physical condition, habits, interests, personality traits, neighbourhood, neighbours' report and school, employment, if any, friends, child being subject to any form of abuse, circumstances of apprehension of the child, mental condition of the child. Most important part of the report is the third part i.e. the result of inquiry where the Probation Officer is required to inform the Board about the emotional factors, physical condition, intelligence, social and economic factors, suggestive cause of the problems, analysis of the case including reasons/contributing factors for the offence, opinion of experts consulted and recommendation regarding rehabilitation by the Probation Officer/Child Welfare Officer.

[16]. The social investigation report is not for discovering evidence regarding the alleged offence. The focus of the social investigation report is to identify and understand the circumstances of the child in question, and what may have led to the alleged crime. The report would also enable the Board to come to a decision as to whether

there are any grounds of denying bail, as per the proviso to Section 12 (1) of the J.J. Act, 2015. Therefore, it is incumbent upon the J.J. Board to take into consideration the social investigation report and make an objective assessment of the reasonable grounds for rejecting the bail application of the juvenile.

8. The social investigation report filed in the present case reads as follows:

- “ 35. As interacted with Sarpanch, Block Samiti members and neighbours they had very positive attitude towards child. They said that he was falsely implicated in this FIR. They supported child and his family.
42. Alleged role of the child in the office: It is said that he is innocent and falsely implicated in FIR. Nothing has been recovered from him and he gave his statements before police, when ever police called him.
- RESULT OF INQUIRY
5. Suggestive causes of the problems:
Falsely implicated, ASI interacted with child he said that he even present at all time when police called him. Most of the villagers are in support of the child. His name in the FIR registered after few months not immediate after the occurrence.
6. Analysis of the case, including reasons /contributing factors of the offence
It is told me that the opposite party trying to involved one girl in relation to this case that child had some grudges with deceased due to this girl. But the child not involved with her at any manner, whether phone, call details, history or anything else proved his connection with that girl, they said even not any weapon recovered from him. Even his name involved after some time.
7. Recommendation regarding rehabilitation by Probation officer/Child Welfare Officer:
As per his Birth Certificate/Date of Birth he was juvenile at the time of occurrence. He was obedient child in his home and follow rules in observation home as well.”

9. Given the social investigation report, there is no reason to deny the bail to the juvenile offender.

10. In Gurbaksh Singh Sibbia v State of Punjab, 1980 (2) SCC 565, (Para 30), a Constitutional Bench of Supreme Court held that the bail decision must enter the cumulative effect of the variety of circumstances justifying the grant or refusal of bail. In Kalyan Chandra Sarkar v Rajesh Ranjan @ Pappu Yadav, 2005 (2) SCC 42, (Para 18) a three-member Bench of Supreme Court held that the persons accused of non-bailable offences are entitled to bail if the Court concerned concludes that the prosecution has failed to establish a prima facie case against him, or despite the existence of a prima facie case, the Court records reasons for its satisfaction for the need to release such person on bail, in the given fact situations. The rejection of bail does not preclude filing a subsequent application. The courts can release on bail, provided the circumstances then prevailing requires, and a change in the fact situation. In State of Rajasthan v Balchand, AIR 1977 SC 2447, (Para 2 & 3), Supreme Court noticeably illustrated that the basic rule might perhaps be tersely put as bail, not jail, except where there are

circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like by the petitioner who seeks enlargement on bail from the Court. It is true that the gravity of the offence involved is likely to induce the petitioner to avoid the course of justice and must weigh when considering the question of jail. So also, the heinousness of the crime. In Gudikanti Narasimhulu v Public Prosecutor, (1978) 1 SCC 240, (Para 16), Supreme Court held that the delicate light of the law favors release unless countered by the negative criteria necessitating that course. In Prahlad Singh Bhati v NCT, Delhi, (2001) 4 SCC 280, Supreme Court highlighted one of the factors for bail to be the public or the State's immense interest and similar other considerations. In Dataram Singh v State of Uttar Pradesh, (2018) 3 SCC 22, (Para 6), Supreme Court held that the grant or refusal of bail is entirely within the discretion of the judge hearing the matter and though that discretion is unfettered, it must be exercised judiciously, compassionately, and in a humane manner. Also, conditions for the grant of bail ought not to be so strict as to be incapable of compliance, thereby making the grant of bail illusory.

11. The possibility of the accused influencing the investigation, tampering with evidence, intimidating witnesses, and the likelihood of fleeing justice, can be taken care of by imposing elaborative and stringent conditions. In Sushila Aggarwal, (2020) 5 SCC 1, Para 92, the Constitutional Bench held that unusually, subject to the evidence produced, the Courts can impose restrictive conditions.

12. Without commenting on the case's merits, in the facts and circumstances peculiar to this case, and for the reasons mentioned above, the petitioner makes a case for bail, subject to the following terms and conditions, which shall be over and above and irrespective of the contents of the form of bail bonds in chapter XXXIII of CrPC, 1973.

13. In Mahidul Sheikh v. State of Haryana, CRM-33030-2021 in CRA-S-363-2020, decided on 14-01-2022, Para 53, this Court observed,

[53]. The pragmatic approach is that while granting bail with sureties, the "Court" and the "Arresting Officer" should give a choice to the accused to either furnish surety bonds or to handover a fixed deposit, or direct electronic money transfer where such facility is available, or creating a lien over his bank account. The accused should also have a further option to switch between the modes. The option lies with the accused to choose between the sureties and deposits and not with the Court or the arresting officer.

14. Given above, the petitioner shall be released on bail in the FIR mentioned above, subject to furnishing a personal bond of Rs. Ten thousand (INR 10,000/-) and shall furnish one surety of Rs. Twenty-five thousand (INR 25,000/-), to the satisfaction of the concerned Court/ Judicial Magistrate having the jurisdiction over the Police Station

conducting the investigation, and in case of non-availability, any nearest Ilaqa Magistrate/duty Magistrate. Before accepting the sureties, the concerned Court must satisfy that if the accused fails to appear in Court, then such surety is capable of producing the petitioner before the Court.

15. In the alternative, the petitioner may furnish a personal bond of Rs. Ten Thousand only (INR 10,000/-), and hand over to the concerned court a fixed deposit(s) for Rs. Ten Thousand only (INR 10,000/-), made in favour of Chief Judicial Magistrate of the concerned district. Said fixed deposit may be made from any of the banks where the stake of the State is more than 50%, or any of the well-established and stable private banks, with the clause of automatic renewal of the principal and the interest reverting to the linked account.

16. The fixed deposit need not necessarily be made from the applicant's account. If such a fixed deposit is made in physical form, i.e., on paper, then the original receipt shall be handed over to the concerned court. If made online, its printout, countersigned by the accused, shall be given; and the depositor shall get the online liquidation disabled. The applicant shall inform the concerned branch of the bank at the earliest that it has been tendered as surety. Such information be sent either by e-mail or by post/courier about the fixed deposit, whether made on paper or in any other mode, along with its number and FIR number. After that, the applicant shall hand over such proof and endorsement to the concerned police station. Such court shall have a lien over the deposit until the case's closure, or discharged by substitution, or up to the expiry of the period mentioned under S. 437-A CrPC, 1973, as the case may be. Subject to the proceedings under S. 446 CrPC, the entire amount of fixed deposit, less taxes, if any, shall be endorsed/returned to the depositor.

17. It shall be the total discretion of the applicant to choose between surety bonds and fixed deposits. It shall also be open for the applicant to apply to the investigator or the concerned court to substitute fixed deposit with surety bonds and vice-versa.

18. On the reverse page of personal bonds, the attesting officer shall mention the permanent address of the petitioner along with the phone number linked with the AADHAR card, the other phone numbers (if any), and e-mail (if any). In case of any change in the above particulars, the petitioner shall immediately and not later than 30 days from such modification, intimate about the change to the concerned Police Station and the concerned Court.

19. The petitioner to also execute a bond for attendance in the concerned Court(s), as and when asked to do so. The presentation of the personal bond shall be deemed acceptance of the following and all other stipulations, terms, and conditions of this bail order.

20. The petitioner shall not influence, browbeat, pressurize, make any inducement, threat, or promise, directly or indirectly, to the witnesses, the Police officials, or any other person acquainted with the facts and the circumstances of the case, to dissuade them from disclosing such facts to the Police, or the Court, or to tamper with the evidence.

21. Till the completion of the trial, the petitioner shall not contact, call, text, message, remark, stare, stalk, make any gestures or express any unusual or inappropriate, verbal or otherwise objectionable behavior towards the victim's family, either physically, or through phone call or any other social media, through any other mode, nor shall unnecessarily roam around their home.

22. Given the nature of allegations and the other circumstances peculiar to this case, the petitioner shall not enter within a radius of one kilometer from the victim's home till the completion of the trial. This Court is imposing this condition to rule out any attempt by the accused to incapacitate, influence, or cause any discomfort to the victim. Reference be made to Vikram Singh v Central Bureau of Investigation, 2018 All SCR (Crl.) 458; and Aparna Bhatt v. State of Madhya Pradesh, 2021 SCC Online SC 230.

23. During the trial's pendency, if the petitioner repeats or commits any offence where the sentence prescribed is more than seven years or violates any condition as stipulated in this order, it shall always be permissible to the respondent to apply for cancellation of this bail. It shall further be open for any investigating agency to bring it to the notice of the Court seized of the subsequent application that the accused was earlier cautioned not to indulge in criminal activities. Otherwise, the bail bonds shall continue to remain in force throughout the trial and after that in terms of Section 437-A of the CrPC.

24. Any Advocate for the petitioner and the Officer in whose presence the petitioner puts signatures on personal bonds shall explain all conditions of this bail order in any language that the petitioner understands.

25. If the petitioner finds bond amount beyond social and financial reach, it may be brought to the notice of this Court for appropriate reduction. Further, if the petitioner finds bail condition(s) as violating fundamental, human, or other rights, or causing difficulty due to any situation, then for modification of such term(s), the petitioner may file a reasoned application before this Court, and after taking cognizance, even to the Court taking cognizance or the trial Court, as the case may be, and such Court shall also be competent to modify or delete any condition.

26. This order does not, in any manner, limit or restrict the rights of the Police or the investigating agency from further investigation as per law.
27. Any observation made hereinabove is neither an expression of opinion on the merits of the case nor shall the trial Court advert to these comments.
28. In return for the protection from incarceration, the Court believes that the accused shall also reciprocate through desirable behavior.
29. The SHO of the concerned police station or the investigating officer shall arrange to send a copy of this order, preferably a soft copy, to the complainant and the victim, within two days. If the victim(s) notice any violation of this order, they may inform the SHO of the concerned police station, the trial court, or even this court.
30. *There would be no need for a certified copy of this order for furnishing bonds, and any Advocate for the Petitioner can download this order along with case status from the official web page of this Court and attest it to be a true copy. In case the attesting officer wants to verify the authenticity, such an officer can also verify its authenticity and may download and use the downloaded copy for attesting bonds.*

Petition allowed in aforesaid terms. All pending applications, if any, stand disposed.

(ANOOP CHITKARA)
JUDGE

February 07, 2022
sonia arora

Whether speaking/reasoned: Yes
Whether reportable: No.