

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-1691-2021 (O&M)
Date of Decision: 12.12.2022

Sumit

....Petitioner(s)

Versus

State of Haryana

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Abhimanyu Singh, Advocate, for the petitioner.

Mr. Naveen Singh Panwar, Deputy Advocate General, Haryana.

JASGURPREET SINGH PURI, J. (Oral)

The present revision petition has been filed by the petitioner challenging the order dated 10.02.2021 passed by the Juvenile Justice Board, Gurugram and also the order dated 03.12.2021 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 at the time of the alleged occurrence his age was 16 years and 11 months and is being tried by Juvenile Justice Board, Gurugram. He submitted that the petitioner is in custody since 27.11.2019 which is more than three years. He further submitted that even 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 story of the prosecution, the name of the petitioner was nominated on the basis of the disclosure statement made by the co-accused namely, Ajay and Chander Shekhar. He further submitted that even as per the prosecution the role attributed to the petitioner was only that he had conspired with the aforesaid Jony and Mony but 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 but he has been implicated in the present case only on the ground of conspiracy. He further submitted that even as per the Social Investigation Report, there is nothing adverse against the petitioner and in the conclusion part it has been only mentioned that the suggestive causes of the problem were bad company and bad intention but there was nothing adverse in the Social Investigation Report but the learned Juvenile Justice Board as well as learned Appellate Court have not considered the Social Investigation Report in its true perspective. He further submitted that the mere fact that the petitioner was suggestive of bad company cannot disentitle the petitioner for grant of bail. He further submitted that it is not the case of the prosecution that the petitioner is hard core criminal or he is involved in some other serious or heinous offence but in fact he was only involved in four more cases which are pertaining to theft only and he is already on bail in those cases. He further submitted that the petitioner who is a juvenile has been nominated on the basis of a disclosure statement of the co-accused which is not permissible in evidence *per se*. He further submitted that three more co-accused who were juveniles and have been tried by the Juvenile Justice Board have already been extended the benefit of bail. He has referred to the bail order passed by

this Court CRR No.1124 of 2021 by which one of the juvenile DXX TXXX was granted bail by this Court on 11.05.2022 and two more other juveniles who are at parity with the present petitioner have also been extended the benefit of bail.

He further submitted that a perusal of the impugned orders passed by the learned Juvenile Justice Board as well as learned Appellate Court would show that the provision of Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as 'J.J. Act') has not been followed in true perspective. He further submitted that whenever there is a child in conflict with law, he is granted a statutory protection under the provision of Section 12 of the J.J. Act and ordinarily bail should be granted to a juvenile but it is only in the exceptional cases wherein bail can be refused by the Court/Board but the Court/Board has to satisfy itself that the accused was not entitled for the grant of bail due to some special and extreme circumstance. He further submitted that however in the present case there is no such special or extreme circumstance to disentitle the petitioner for making a departure from the General Rule which is contained in Section 12 of the J.J. Act and has submitted that in view of the aforesaid facts and circumstances especially in view of the fact that the petitioner has faced incarceration for three long years and only two witnesses have been examined till date and therefore, the petitioner may be considered for the grant of regular bail.

On the other hand, Mr. Naveen Singh Panwar, learned Deputy Advocate General, Haryana has submitted that it is correct that the petitioner has faced incarceration from 27.11.2019 which is more than three years and

it is also correct that the other three similarly situated juveniles who were in conflict with law with the present petitioner have been extended the benefit of bail and the role attributable to all the three was similar to that of the present petitioner i.e. of conspiracy. He has however submitted that the petitioner is involved in four more cases pertaining to theft.

I have heard the learned counsel for the parties.

Section 12 of the J.J. Act provides for a non-obstante clause for governing the provisions of bail to a juvenile. Ordinarily bail should be granted to a juvenile who is a child in conflict with law but as per the proviso of Section 12 of the J.J. Act the bail can be denied only due to strong and extreme reasons. In the present case, the bail application of the petitioner has been dismissed without specifying such extreme or strong reasons and therefore, this Court is of the view that both the orders which have been passed by the learned Juvenile Justice Board as well as by the learned Appellate Court are against the spirit of Section 12 of the J.J. Act. During the course of arguments, the learned State counsel has also submitted a typed copy of the Social Investigation Report. A perusal of the conclusion/result of inquiry would show that it only states that there are suggestive causes of the problem which have been stated to be bad company and bad intention but from nowhere it can be seen that the petitioner is a hard core criminal or that in case the petitioner is released on bail, then he may go back to the same company. The petitioner has faced incarceration for more than three years and the other three juveniles who are at parity with the petitioner have been extended the benefit of bail. Therefore, this Court is of the considered view that the present petition

deserves to be allowed considering the aforesaid peculiar facts and circumstances especially considering the Social Investigation Report as well as the long custody of more than three years pertaining to the present petitioner.

Consequently, the present petition is allowed. The orders dated 10.02.2021 passed by the learned Juvenile Justice Board and order dated 03.12.2021 passed by the learned Appellate Court are hereby set aside. The petitioner is directed to be released on bail to the satisfaction of the learned Principal Magistrate, Juvenile Justice Board, Gurugram/Duty Magistrate concerned.

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.

12.12.2022

rakesh

Whether speaking
Whether reportable

(JASGURPREET SINGH PURI)
JUDGE

: Yes/No
: Yes/No