

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

234

CRR-1908-2022 (O&M)
Date of decision :07.12.2022

Rohit

... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

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

Mr. Vishal Malik, AAG, Haryana.

VIKAS BAHL, J.(ORAL)

Challenge in the present criminal revision is to the order dated 28.07.2022 vide which the Principal Magistrate, JJB, Narnaul has dismissed the bail application filed by the petitioner under Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015. Challenge is also to the order dated 09.08.2022 vide which the appeal filed against the said order has also been dismissed.

Learned counsel for the petitioner has submitted that the petitioner, who was a juvenile at the time of the incident, has been in custody since 27.05.2021 and the investigation is complete and the challan has been presented and there are 8 prosecution witnesses, out of which, 3 have been examined and thus, the trial is likely to take time and the petitioner is not involved in any other case. It is further submitted that in the present case, no recovery of *Ganja* has been effected from the present petitioner and even on merits, the case of the petitioner is on a similar

footing as that of co-acused Ajit and said Ajit, who is an adult, has already

been granted the concession of regular bail by this Court vide order dated 22.11.2022 passed in CRM-M-40853-2022. It is submitted that the custody of the present petitioner is longer than that of said co-accused Ajit. It is further submitted that the impugned orders are in violation of Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter 'The Act') and for the said purpose, reliance has been placed upon the judgment of Co-ordinate Bench of this Court in ***CRR-1019 of 2020 passed in Gurkirat @ Gora versus State of Haryana.***

Learned State counsel, on the other hand, has opposed the present petition and has submitted that the recovery, in the present case, is of commercial quantity and the petitioner, along with Ajit, had tried to stop the canter and had even broken the glass of the canter with a danda/rod and then, tried looting the said canter; and the danda has been recovered from the present petitioner. It is submitted there is likelihood that the petitioner might indulge in criminal activities.

This Court has heard learned counsel for the parties and has perused the paper book.

Before advertng to the facts of the present case, it would be relevant to take note of Section 12 of the Act of 2015 and the same is reproduced hereinbelow:-

'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."*

A perusal of the above reproduced Section 12 of the Act would show that bail is the rule and not jail, in case of a juvenile and the same is to be refused only in case the Court comes to the conclusion on the basis of material before it that the case is covered under any of the three exceptions as mentioned in Section 12 of the Act.

A Co-ordinate Bench of this Court in CRR-1019-2020 in case titled as "***Gurkirat @ Gora Versus State of Haryana***" has held as under:-

"Prayer in this revision petition is for setting-aside the order dated 31.05.2020 passed by the learned Magistrate as well as the order dated 01.07.2020 passed by the Appellate Court vide which the regular bail application of the petitioner in FIR No.99 dated 14.03.2020 registered under Sections 302, 323, 341 read with Section 34 and 506 of the Indian Penal Code, 1860 (in short 'IPC') at Police Station Taraori, District Karnal was dismissed.

Brief facts of the case are that the FIR was registered on a complaint given by Lakhwinder Singh that he is doing labour work and is having two children. His son Aspi @ Happy was also doing the labour work with the complainant. About 01 year ago, Kulwinder Singh, father of the petitioner has levelled allegations on the son of the complainant that he had teased his niece and thereafter, a Panchayat was convened and the matter was compromised but the accused were having a grudge against

his son namely Aspi @ Happy. On 13.03.2020 at about 07:00 PM, his son Aspi @ Happy along with his mother Harvinder Kaur and nephew of the complainant namely Gurpreet Singh have gone to take the medicine for Harvinder Kaur on a motorcycle bearing registration No.HR-05-BC-8967 and when they reached at Sambhi turn, then Kulwinder Singh, Gurkirat @ Gora (present petitioner) along with two other persons namely Karnail Singh and Balkar Singh waylaid them and thereafter, Balkar Singh, who was having a Binda in his hand, gave blow of same on the chest of the son of complainant. Then, Kulwinder Singh gave another Binda blow on the back of the son of the complainant, Karnail Singh gave Binda blow on the chest of the son of the complainant and the petitioner – Gurkirat @ Gora gave an iron pipe blow on the chest and back of the son of the complainant. Thereafter, all the assailants ran away from the spot and the injured was taken to hospital where he was medico legally examined and later on, he had died on 14.03.2020.

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Learned senior counsel for the petitioner has submitted that as per the provisions of Section 12 of the Act of 2000, 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 the same can be declined only in case where reasonable grounds are there for believing that the release of juvenile is likely to bring him into the association of any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice.

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Reply by way of affidavit of the Investigating Officer is on record and as per the reply, it is stated that upon verification, it was found that the petitioner as well as his father have caused injuries to the victim whereas the two persons namely Karnail Singh and Balkar Singh, named in the FIR were found innocent.

Counsel for the State has placed on record the opinion regarding cause of death of the deceased, which is reproduced as under:

“The opinion regarding the cause of death has already been given in this case on 20.10.2020 that “the cause of death in this case are injuries and its complications”. In our opinion, it was a case of poly-trauma having Severe Acute Respiratory Distress Syndrome and Shock with Glasgow Coma Scale E1M1V1 as reported in the hospital record and the findings noticed during autopsy and histopathological examination of viscera of deceased corroborated with the hospital record. In our opinion, the complications due to injuries were Acute Respiratory Distress Syndrome followed by Cardiac Arrest.”

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Counsel for the complainant, on the other hand, has argued that as per the FIR, there is an enmity between the family of the complainant and father of the petitioner Kulwinder Singh on account of teasing the daughter of Kulwinder Singh i.e. the sister of the present petitioner – Gurkirat @ Gora by the deceased Aspi@ Happy about 01 year ago, prior to the incident and the matter was compromised in the Panchayat. It is further submitted that since the petitioner is above 17 years of age, he should be treated as an “Adult” and therefore, his bail application be declined.

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Accordingly, the present revision petition is allowed, the dated 31.05.2020 passed by the learned Magistrate as well as the order dated 01.07.2020 passed by the Appellate Court, are set-aside and the petitioner is directed to be released on bail subject to his furnishing bail/surety bonds to the

satisfaction of the trial Court/Duty Magistrate/Illaqa Magistrate.”

A perusal of the above-said case would show that even where the allegation against the juvenile petitioner therein (Gurkirat @ Gora) was that he gave an iron pipe blow on the chest and back of the son of the complainant, the petitioner therein was released on bail.”

It has been noticed in the order passed by the Principal Magistrate, Juvenile Justice Board, Narnaul dated 28.07.2022 that juvenile is entitled to bail as a matter of right unless the case falls within exception as carved out in the provision itself. The said provision cannot be read in a manner so as to put the juvenile in a worse off condition than a person who is an adult.

In the present case, it is not in dispute that the allegations against the petitioner and co-accused Ajit are of a similar nature. The said Ajit had applied for the concession of regular bail and vide order dated 22.11.2022 passed by this Court, the said Ajit was granted regular bail in addition to other co-accused persons Pardeep Sharma and Jayaram Jalari. The said Ajit was in custody since 20.05.2022 whereas the present petitioner has been in custody since 27.05.2021. The petitioner is neither the owner of the Canter nor was he driving the Canter nor the person from whom the recovery of *Ganja* has been effected. Moreover since, the petitioner is not involved any other case, thus, it cannot be presumed that he would indulge in similar activity in future.

Keeping in view the above said facts and circumstances, the present Criminal Revision is allowed and the impugned orders dated 28.07.2022 and 09.08.2022 are set aside and the petitioner is ordered to be

released on bail subject to his furnishing bail / surety bonds to the satisfaction of the concerned trial Court/ Duty Magistrate/Illaq Magistrate and subject to his not being required in any other case.

However, it is made clear that in case, any act is done by the petitioner to threaten or influence the complainant or any of the witnesses, then it would be open to the State to move an application for cancellation of bail granted to the petitioner.

Nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present revision bail petition.

Pending application(s) stands disposed of.

(VIKAS BAHL)
JUDGE

December 07, 2022
Rajeev (rvs)

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