

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

**CRM-M-47646-2021
Date of decision: 16.03.2022**

HARSHPetitioner

Versus

STATE OF PUNJABRespondent

CORAM: HON'BLE MR. JUSTICE SANT PARKASH

Argued by : Mr. Deepak Verma, Advocate
for the petitioner.

Mr. Tanvir Joshi, AAG, Punjab
for the respondent.

SANT PARKASH, J.

1. Prayer in this petition under Section 439 of the Code of Criminal Procedure, 1973 is for grant of regular bail to the petitioner, in case, FIR No. 21 dated 22.03.2020 (Annexure P-1) registered under Sections 304-A and 279 of the Indian Penal Code, 1860 (for short 'the IPC') at Police Station Sadar Nawanshahr, District SBS Nagar but challan in the present case was presented under Section 302/397/201 of the IPC.

2. The petitioner has sought regular bail on the ground he being juvenile at the time of alleged occurrence and seeking parity with his co-accused, who has already been granted bail by Co-ordinate Bench of this Court vide order dated 29.04.2021.

3. The allegation against the petitioner is that he along with his co-accused persons have constituted a gang. They used to commit

robbery by inflicting injuries and have committed murder of one Jasvir Singh.

4. I have heard learned Counsel for the parties and gone through the case file.

5. It has been pleaded in the petition that on 21.03.2020, one Jasvir Singh was found lying dead alongside the road with injuries on his person and an FIR bearing No.21 dated 22.03.2020 was lodged on the version of Darbara Singh under Sections 304-A and 279 IPC, who was the first person to reach at the spot and who was known to the deceased. It was after two months that the petitioner was arrested in another FIR bearing No.47 dated 11.05.2020, under Sections 302/397/201 IPC at PS Rahon, District SBS Nagar and since 23.05.2020, he is in illegal custody as the petitioner was minor on the date of alleged incident, his date of birth being 01.07.2002. The petitioner was granted bail in case FIR No.47 dated 11.05.2020 vide orders dated 13.05.2021 (Annexure P-2) passed by Principal Magistrate, Juvenile Justice Board, SBS Nagar by treating the petitioner as a juvenile. While being in custody in the FIR No.47 dated 11.05.2020, he is said to have suffered confessional statement before a Police Officer of his involvement in the instant case i.e. FIR No.21 dated 22.03.2020. The petitioner applied for bail in the instant FIR No.21 in the Court of learned Additional District and Sessions Judge, SBS Nagar but the same was dismissed vide orders dated 17.05.2021 on the ground that challan has been presented against the applicant/accused before learned Area Magistrate as adult and the case has been committed to the Court of Sessions. No application on behalf

of the applicant/accused was filed for declaring him juvenile in conflict with law. The petitioner approached this Hon'ble Court by filing CRM-M-24996 of 2021 whereby vide order dated 24.09.2021 the trial Court was directed to consider the plea of the present petitioner on merit with regard to his being a juvenile under the provisions of Juvenile Justice (Care and Protection of Children) Act, 2015. The accused/petitioner filed second bail application which was also dismissed vide order dated 14.10.2021.

6. Learned Counsel for the petitioner has submitted that the petitioner was already ordered to be released from observation home in another FIR No. 47 dated 11.05.2020 vide orders dated 13.05.2021 passed by Principal Magistrate, Juvenile Justice Board, SBS Nagar which is later in time of the present FIR by considering the plea of the petitioner being juvenile. The learned Court below vide impugned order dated 14.10.2021 has wrongly construed the provisions of Juvenile Justice (Care and Protection of Children) Act, 2015. Challan in the matter has already been presented. Co-accused Hardeep Singh @ Dipi has already been granted bail by Co-ordinate Bench of this Court vide order dated 29.04.2021. There are 29 prosecution witnesses. The trial in the present case is likely to take long time. No recovery is to be effected from the petitioner. The petitioner is in custody since 23.05.2020. No useful purpose will be served by keeping the petitioner in custody. Therefore, the petitioner may be enlarged on regular bail.

7. On the other hand, learned State Counsel has strongly opposed the submissions of learned Counsel for the petitioner and has submitted the petitioner at first had given kick blow to the scooter of

the deceased and then he and his co-accused had robbed and killed the deceased with dagger blows. The petitioner gave sword blow to the scooter of the deceased in order to show the occurrence as accident. In view of the gravity of the offence and nature of crime, the petitioner is not entitled to bail. The impugned orders do not suffer from any illegality. Therefore the petition may be dismissed.

8. In the present case, it has come on record that the petitioner was less than 18 years of age at the time of commission of the offence. In the given circumstances, the bail application of the petitioner is to be decided in view of the provisions of Juvenile Justice (Care and protection of Children) Act, 2015.

9. The JJ Act was enacted to consolidate and amend the law relating to children alleged and found to be in conflict with law and children in need of care and protection by catering to their basic needs through proper care, protection, development, treatment, social re-integration, by adopting a child-friendly approach in the adjudication and disposal of matters in the best interest of children and for their rehabilitation through processes provided, and institutions and bodies established.

10. Section 12 of the JJ Act which deals with the matter of grant of bail to a person who is apparently a child alleged to be in conflict with law reads 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 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.”

11. The bail application of the petitioner was dismissed by learned Additional Sessions Judge, SBS Nagar vide impugned order dated 14.10.2021. The relevant part of the observations made therein

are as under :-

“....10. A bare perusal of the said provision clearly reveals that Section 12 of the Act, 2015 does not lay down a universal principle that in every case the juvenile has a right to be released on bail. In fact, if reasonable ground exists for the Court to believe that the release is likely to bring the juvenile into association with any known criminal or expose him to moral or, physical or psychological danger or his release would defeat the ends of justice, under there three circumstances, the Court would be justified in denying the benefit of bail to the juvenile.

11. The Act, 2015 is certainly meant to treat a child with care and sensitivity, offering him a chance to reform and settle into the main stream of society, the same can not be allowed to be used as a ploy to due the course of justice while dealing with the case of heinous offence. The provision of the Act, 2015 can not be interpreted to work only for the benefit of juvenile, ignoring the cries of victim. In the present case, the applicant is involved in a case under Section 302/397/201 IPC.

13. Thus, clearly if the present applicant is released on bail, there is likelihood of physical danger to his life. Moreover, since he is accused of a heinous crime like murder, he would be a source of curiosity and an object of social ridicule and comment. Therefore, his psychology is bound to be adversely affected. In these circumstances, it is better to keep him in the safe confine. Most importantly, if those who allegedly commit a heinous crime like murder were granted bail, then conscience of the society would be shocked. A crime is an act against the society. Therefore, the conscience, the sensitivity of the society would have to be kept in mind. Thus, the release of the applicant would defeat the ends of justice...”

12. The nature of the offence is not one of the factors on which bail may be granted or refused to the juvenile in conflict with law and, therefore, bail cannot be denied to a juvenile in conflict with law on the ground of gravity of the offence involved. Section 12 of the JJ Act requires bail to be mandatorily granted to the juvenile in conflict with law and grant of bail to the juvenile in conflict with law is the rule and denial an exception. Bail can be denied to a juvenile in conflict with law only where there appear reasonable grounds for believing that the release

of the juvenile in conflict with law on bail is likely to bring him in association with any known criminal or expose him to moral, physical or psychological danger or his release would defeat the ends of justice. For judicial precedents in this regard reference may be made to ***Mast. Dharmabir Singh Vs. State, NCT of Delhi (Delhi High Court): 2007(10) R.C.R. (Criminal) 328; Pankaj Vs. State of Haryana (PHHC) 2013(7) R.C.R. (Criminal) 1105; Satbir Vs. State of Haryana (PHHC) : 2011(2) R.C.R. (Criminal) 621; Shiv Kumar @ Sadhu Vs. State of U.P. (Allahabad High Court) : 2011(8) R.C.R. (Criminal) 1346 and CRR-808-2020 titled as 'Sahil @ Nannu Vs. State of Haryana' decided by this Court on 09.06.2020.*** The Juvenile Justice Board has to record the reasons for denying the bail and circumstances that led to such a decision.

13. In the present case, learned Additional Sessions Judge, SBS Nagar dismissed the application of the petitioner for grant of bail on the ground that his release on bail would expose him to moral, physical or psychological danger and that his release would defeat the ends of justice but the learned Court below did not refer to any material in support of his decision. No such material has been placed before this Court by the respondent-State.

14. Also, co-accused Hardeep Singh @ Dipi whose role is on the same footing with the present petitioner was granted bail by Co-ordinate Bench of this Court in the present FIR vide order dated 29.04.2021 passed in CRR-1296-2020 by observing that the reasonings of the learned Court below that the petitioner being accused of a heinous crime like murder would be a source of curiosity and an object of social

ridicule and there is danger to the physical, mental and psychological safety of the petitioner are not in consonance with the basic objective behind the special legislation contained in Section 12(1) of the Juvenile Justice Act, more particularly at this stage when by now he has already remained in confinement in the Protection Home for almost a year.

15. In view of the above referred judicial precedents and the facts and circumstances of the case particularly in the absence of any material furnishing reasonable grounds for belief as to existence of any of the grounds specified in Section 12 of the JJ Act for denial of bail, the period of custody of the petitioner, parity with his co-accused who has already been granted bail, the petitioner is entitled to grant of bail and the impugned orders of the Courts below declining bail to the petitioner suffer from material illegality and are liable to be set aside.

16. Accordingly, the present petition is allowed and the impugned orders are set aside and the petitioner is ordered to be released on regular bail on furnishing of personal and surety bonds to the satisfaction of the learned trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.

17. The observations made herein are strictly for the disposal of the present petition and nothing shall be construed to be an expression on merits of the case.

16.03.2022
kavneet singh

(SANT PARKASH)
JUDGE

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