

234 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-149-2003 (O&M)
Date of Decision: 12.07.2023

Sachin @ Suraj ...Appellant

Vs.

State of Haryana ...Respondent

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present: Mr. Balvinder Sangwan, Advocate
for the appellant.

Ms. Sheenu Sura, DAG, Haryana.

N.S.Shekhawat J.

1. The appellant/ "Child In conflict with Law" (hereinafter referred to as the "CCL") has filed the present appeal under Section-101 of the Juvenile Justice (Care and Protection of the Children), Act 2015 (hereinafter referred to as the "Act") to challenge the order dated 28.10.2022, passed by the Court of Learned Additional Sessions Judge, Faridabad, in case FIR No.775 dated 02.12.2020 under Sections 302 and 34 of IPC (Section 34 of IPC deleted and Section 25 of the Arms Act added later on), registered at Police Station Palla, Faridabad, whereby the bail application filed by the appellant/CCL was ordered to be dismissed.

2. The story of the prosecution, as projected in the report under Section 173 Cr.PC is as follows:-

3. As per the complainant Dilip Kumar, at about 06:30 PM on 02.12.2020, he was present in his house, he received a phone call from his neighbour Rohit son of Shiv Charan, who informed him that the certain boys

had encircled his brother Mahabir in Budh Bazar, Surya Vihar and they were beating him and he should reach there at the earliest. On receiving the information, the complainant was going near Budh Bazar and Kartik, friend of Mahabir met him there and he informed the complainant that injuries had been caused to Mahabir with knife and he was shifted to Shivalik Hospital. After checking Mahabir, the doctors had referred him to B.K Hospital and they had taken him to QRG Hospital, near Neelam Bridge for treatment. After checking him, the doctors declared him dead. The complainant asked Kartik son of Tara Chand Sharma with regard to the quarrel and Kartik told him that at about 05:30 P.M., Suraj, the petitioner, Raunak, Hemant and Abhishek were playing with Mahabir and they had a fight there. Thereafter, Suraj along with Raunak, Hemant and Abhishek came in Budh Bazar and after reaching there, Suraj slapped him and Mahabir and thereafter, he had taken out the knife from his pocket and gave knife blows on the face and abdomen of Mahabir. When they had tried to save him, then Suraj also turned his knife towards them and he, Saurav and Manoj had gone from there by leaving Mahabir there only. The associates of Suraj also ran to catch them and he had gone to his house. After about 10/15 minutes, they saw that blood was oozing from the body of the Mahabir and Suraj and his associates had killed him with knife. With these broad allegations, the FIR in the present case was got registered by Dalip Kumar, complainant.

4. Learned counsel for the appellant/CCL vehemently argued that he was arrested in the present case on 07.12.2020. After completion of the investigation, the final report under Section 173 Cr. PC has already been filed by the police. In the present case, vide the order dated 21.09.2021, Annexure A-

3, the present appellant was ordered to be tried as an adult. While referring to the Section 12 of the “Act”, learned counsel submitted that the present appellant was entitled to bail in view of the said provision of law and the impugned order has been passed by completely overlooking the beneficial provisions of the said provision. He further contends that from a bare reading of the provisions of Section 12 of the Act, it appears that the intention of the legislature was to grant bail to the juvenile irrespective of nature or gravity of the offence, alleged to have been committed by him and the 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 his release would defeat the ends of justice. In the present case, the present appellant was in custody for more than 02 years and 07 months and his rights were seriously prejudiced. Learned counsel further submitted that as per the case of the prosecution, the occurrence was witnessed by Kartik, Sourav and Manoj. While referring to their testimonies on oath (Annexures A-6 to A-8), learned counsel submitted that all the eye witnesses had turned hostile during the course of trial and had failed to identify the appellant. Even it has been shown that a knife and a blood-stained shirt had been recovered from the appellant, as per the recovery memo dated 07.12.2020 (Annexure A-9) and Dalip, brother of the deceased/complainant was shown to be the witness of the recovery memo. However, from the testimony of Dalip, it is apparent that he had categorically stated that no recovery was effected in front of him and the police had obtained his signatures on blank papers. Apart from that, Chhote Lal father of the Mahabir, since deceased had also failed to support the case of the prosecution. Learned counsel

further submitted that in the present case, the social investigation report had not been called for and the impugned order was passed without due application of mind.

5. On the other hand, learned State counsel has vehemently opposed the prayer made by the present appellant on the ground that he was the main accused. As per the learned State counsel, blood-stained clothes and the knife were recovered from him, which unerringly pointed towards the guilt of the accused. Apart from that, three other co-accused namely, Hemant, Raunak and Abhishek were found innocent and the present appellant is the sole accused in the present case. Thus, he does not deserve the concession of bail by this Court.

6. I have heard learned counsel for the parties and with the able assistance of the respective counsels, I have perused the material against the present appellant.

7. The question that arises for determination is, whether on being tried as an adult, is the juvenile denuded of statutory right available to him under Section 12 of the Act. However, the said question is no more res integra and has been deliberated upon by several High Courts. Before I proceed to deal with the said decision, it would be necessary to reproduce the Section 12 of the “Act”, which is a provision pertaining to the release of a child alleged to be in conflict with the law and it 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 [or a place of safety, as the case may be] 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.*

In the scheme of enactment, it can be seen that Section 12 contains an imperative mandate to release a child on

bail, when he is apprehended or detained in connection with an offence and it is a special provision, which stand to the exclusion of the Code of Criminal Procedure, Section 5 of the Cr.PC contained a saving clause, which reads thus:-

“5.Saving:- Nothing contained in this Code shall, in the absence of specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred or any special form or procedure prescribed, by any other law for the time being in force.”

The parameters for considering an application for bail filed by a juvenile under Section 12 of the Act of 2015 are clearly distinguishable from the application filed under Section 439 of Cr. PC and after following the procedure as prescribed under the Act i.e. from Sections 15 to 18 when a decision is taken to try a juvenile as an adult, the issue that arises for consideration is upon, such a contingency, whether the benefit of Section 12 can be denied to him.

Even when a child is sent up for trial as an adult before a Children’s Court, the child does not become an adult or ‘major’, but is only to be treated differently considering the heinous nature of the offence alleged and consequent need for a stricter treatment of the offender, though still as a juvenile in

conflict with law. It must be borne in mind that the Legislature has created this categorization based upon an assessment of the child's mental and physical capacity to commit such offence, ability to understand the offence. If the intention of the Legislature was that upon such assessment, the child would de-jure become an adult, then the question of there being a separate Children's Court to try him with specific safeguards provided for the trial would not arise. That however is not the case.

8. In fact, the "Act" is a beneficial piece of legislation and it must be construed by taking into consideration the object behind its enactment, being to provide for the care, protection, treatment, development and rehabilitation of neglected or delinquent juveniles. It is a beneficial legislation aimed at making available the benefit of the Act to the neglected or delinquent juveniles. While construing the provisions contained in Section 12 of the "Act", which contemplates that a juvenile shall be released on bail notwithstanding anything contained in Cr.PC and Section 12 further provides that he may be released with or without sureties, or may even place under the supervision of Probation Officer or under the care of any fit person. The only embargo not releasing such a person on bail is the proviso, which prescribes that if there appears reasonable grounds for believing that the release is likely to bring that person into the association with any known-criminal or expose the said person to moral, physical or psychological danger or the person/persons release would defeat the ends of justice.

9. In the present case, it appears that the Children's Court had rejected the application without adverting to the statutory mandate of Section 12

of the “Act”. No doubt, the appellant/CCL was directed to be tried like an adult, but still he remains a juvenile in conflict with law and can never be denied the benefit of Section 12 of the “Act”. Apart from that, it is apparent that the occurrence was alleged to be witnessed by Kartik, Saurav and Manoj. However, from the perusal of their depositions, it is apparent that they had failed to identify the appellant. Apart from that, even Dalip Kumar, who was the witness to recovery memo had also refused to support the case of the prosecution and stated that no recovery was effected in front of him and the police had obtained the signatures on blank papers. It is also not in dispute that the present appellant was arrested in the present case on 07.12.2020 and is continuing in custody which may bring him in association with any known criminals and his right to speedy trial under Article 21 of the Constitution of India is also violated.

10. In view of the above discussion, the present appeal is allowed and the appellant is ordered to be released on bail pending trial on his furnishing bail bonds and surety to the satisfaction of the concerned trial Court/ Duty Magistrate/Chief Judicial Magistrate.

11. It is further ordered that the appellant shall attend the trial on regular basis and shall also report to the Probation Officer once in every two months and his performance and conduct shall be monitored by the Probation Officer. Apart from that, on being released on bail, the appellant shall furnish his contact number and residential address to the Investigating Officer as well as the Trial Court and shall also keep them updated, in case there is any change.

12. The above observations have been made, only for the limited purpose of disposal of the present bail application and nothing stated above shall be construed as an expression on the merits of the case and the Trial Court

shall decide the trial on the basis of the material placed before it.

12.07.2023
hitesh

(N.S.SHEKHAWAT)
JUDGE

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