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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRR-481-2023 (O&M)

Date of decision : 24.02.2023

Gurmeet Singh @ Bagga

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Ms. Savita Rana, Advocate for the petitioner.

Ms. Upasana Dhawan, AAG, Haryana.

VIKAS BAHL, J. (ORAL)

CRM-8195-2023

This is an application filed under Section 5 of the Limitation Act, 1963 for condonation of delay of 12 days in filing the present Criminal Revision.

Notice in the application.

Learned State Counsel has opposed the present application for condonation of delay.

For the reasons stated in the application, the same is allowed and the delay of 12 days in filing the present Criminal Revision is condoned.

Main case

Challenge in the present Criminal Revision is to the order dated 04.11.2022 passed by the Sessions Judge, Karnal, whereby an

application seeking bail under Section 12 of The Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter to be referred as “the Act of 2015”), has been dismissed. Challenge has also been made to the order dated 06.12.2022, whereby an appeal filed against the said order dated 04.11.2022 has also been dismissed.

Learned counsel for the petitioner has submitted that the petitioner is in custody since 21.06.2019 and there are 16 prosecution witnesses, out of which, five witnesses are yet to be examined and thus, the conclusion of trial is likely to take time. It is further submitted that the petitioner had earlier filed a regular bail application under Section 439 of Cr.P.C. which was withdrawn on 30.08.2022 with liberty to file an appropriate application before the appropriate Court since the petitioner is a juvenile. It is contended that the petitioner was not named in the FIR and there is no eye-witness in the present case and the petitioner is sought to be implicated solely on the basis of the fact that he was last seen with the deceased and even with respect to same, there is no test identification parade which had been conducted. It is argued that the Court below had, merely on the basis of assumptions and conjecture, come to the conclusion that the petitioner's release might expose him to moral, physical or psychological danger and had not taken into consideration the fact that the petitioner is not involved in any other case and there is nothing to suggest that the petitioner would indulge in illegal activity in future, in case he is released on bail. It is further argued that keeping in view the custody undergone by the petitioner alone, the petitioner, even if

he was an adult, would have been entitled to regular bail and the provisions of Section 12 of the Act of 2015 have been completely misconstrued by the Court below inasmuch as, as per the settled law, bail is a matter of right for a child in conflict with law and its denial is an exception.

Reliance has also been placed by learned counsel for the petitioner on three judgments of this Court in **CRR-2201-2019 decided on 22.09.2020 titled as “Prabhkirat Singh @ Paras Versus State of Punjab”**, **CRR-1019- 2020 decided on 25.03.2021 titled as “Gurkirat@ Gora Versus State of Haryana”** and **CRR-233-2021 decided on 02.06.2021 titled as “Vishnu Versus State of Haryana”**. Thus, it has been prayed that the impugned orders be set aside and the petitioner be released on regular bail.

On the other hand, learned State Counsel has opposed the present petition for grant of regular bail and has submitted that in the present case, the niece of the complainant Tanya was at home when two unknown persons had taken away the deceased and it is the said Tanya who had implicated the present petitioner as one of the person who was involved in the present crime. It is further submitted that the orders passed by the Court below are legal and in accordance with law and thus, deserve to be upheld and the application of the petitioner for bail deserves to be dismissed.

This Court has heard learned counsel for the parties and perused the record and is of the opinion that the present criminal revision

deserves to be allowed and the petitioner deserves to be released on bail.

Section 12 of the Act of 2015 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.”*

As per the Section reproduced hereinabove, and the settled legal position with respect to the same, benefit of bail is a matter of right for a child in conflict with law and its denial thereof, is an exception.

Before proceeding further, it would be apt to make a reference to the judgments which have been relied upon by the learned counsel for the petitioner. The relevant portion of judgment passed in CRR-1019-2020 passed in “***Gurkirat @ Gora Versus State of Haryana***” is reproduced hereinbelow:-

“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 way-laid 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.

Xxxxxxxx xxx

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.

Xxx xxx xxx

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 petitioner therein (Gurkirat @ Gora) was that he had given an iron pipe blow on the chest and back of the son of the complainant, the petitioner therein was released on bail.

A Coordinate Bench of this Court was pleased to grant bail in **Vishnu’s** case (supra) also where the allegation was that the petitioner therein had inflicted the injury on the head of the deceased and a

bloodstained wooden stick was recovered from the petitioner therein.

Relevant portion of the said judgment is reproduced hereinbelow:-

“Petitioner, who is a child in conflict with law, has filed the instant petition through his father, challenging the orders dated 15.01.2021, Annexure P-2, whereby application for grant of bail under Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short “the Act”) has been declined by the Principal Magistrate, Juvenile Justice Board, Rohtak and order dated 02.02.2021 passed by learned Additional Sessions Judge, Rohtak whereby appeal filed against the said order has been dismissed.

Facts, in brief, are that on the basis of a complaint by Rajender, FIR No.214 dated 28.05.2020 was registered under Section 201, 302, 34 of the Indian Penal Code and Section 3 (2) (vi) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short “SC & ST Act”) on the allegation that Amit alias Neetu and the present petitioner have murdered his son Sombir. During investigation, the petitioner and the coaccused were apprehended on 28.05.2020 and they admitted their involvement in the homicide in their disclosure statement.

Xxx xxxxxxxx

Opposing the petition, State counsel, who is assisted by the counsel for the complainant, upon instructions from SI Bhagat Singh submits that the petitioner inflicted the injury on the head of the deceased and a blood stained wooden stick as well as a motorcycle used in the crime have been recovered from the petitioner. As per his instructions, challan has been presented on 23.07.2020, charge has been framed on 10.03.2021 and the trial is fixed for 03.06.2021

for recording of statement of prosecution witnesses though none of the witnesses has appeared in the witness box so far. He submits that if the petitioner, is released on bail, there is a likelihood of his coming in contact with criminals. According to the respondents, an application for re-determining the age of the petitioners is pending before the Trial Court.

Xxxxxx xxx

Grant of bail to a child in conflict with law is a rule and rejection of the same is an exception. Section 12 of the Act provides that notwithstanding anything contained in the Code of Criminal Procedure or in any other law for the time being in force, except for the three contingencies, specified in proviso to Section 12 (1) of the Act, the grant of bail to a child in conflict with law cannot be declined. The Courts have even gone to the extent of holding that neither the gravity of the offence nor the fact that the co-accused are yet to be apprehended is a ground to reject the prayer. The Courts below have failed to appreciate the legal position of law which has been followed by this Court in CRR-862-2020, titled as Vishal vs. State of Haryana decided on 27.05.2020 and CRR-962-2020 titled as Sanjiv vs. State of Haryana decided on 02.07.2020.

During the course of arguments, the respondents could neither show nor refer to any material to explain as to how, in case the petitioner is enlarged on bail, would he be exposed to moral, physical or psychological danger or would come in contact of known criminals. Mere apprehension of the prosecution without there being any material on record would not be sufficient to decline the prayer for grant of bail. It may also be noticed that in case a juvenile is found guilty and convicted, the maximum period that he can be ordered to

spend in a Special Home under Section 18(1) (f) of the Act is three years. The petitioner has spent more than one year in incarceration, therefore, no purpose would be served in detaining the petitioner any further.

As a sequel to the above discussion, the revision petition is accepted, the impugned order dated 15.01.2021 passed by the Principal Magistrate, Juvenile Justice Board, Rohtak as well as order dated 02.02.2021 passed by the Additional Sessions Judge, Rohtak are hereby set aside.

Without adverting to the merits of the case at this stage, the petitioner is ordered to be released on bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Chief Judicial Magistrate/Judicial Magistrate concerned.

Xxxxxx xxx”

In the present case, the petitioner is in custody since 21.06.2019 and since five witnesses are yet to be examined, thus, the conclusion of trial is likely to take some time. The petitioner was not named in the FIR and there is no eye-witness in the present case and the petitioner is sought to be implicated on the basis of the allegation that he was last seen with the deceased. The petitioner has been nominated as an accused on the statement of Tanya, who is niece of the complainant and it is the case of the petitioner that no Test Identification Parade had been conducted in the present case. A perusal of order dated 04.11.2022 would show that the Court, solely on the basis of the fact that the petitioner has a habit of drinking, observed that the case would fall within the exceptions under Section 12 of the Act of 2015. There is no material to show that there is any reasonable ground for believing that the release of the

petitioner is likely to bring him into association with any known criminals or that his release would expose him to moral, physical or psychological danger or his release would defeat the ends of justice. The petitioner is not involved in any other case.

Keeping in view the abovesaid facts and circumstances, the present Criminal Revision is allowed and impugned orders dated 04.11.2022 and 06.12.2022 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/Illaqa Magistrate and subject to him not being required in any other case.

However, 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 criminal revision petition.

All the pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid judgment.

24.02.2023

Pawan

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No