

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(205)

CRR-908-2023 (O&M)

Date of decision: - 11.05.2023

Deepanshu alias Maanu

....Petitioner

Versus

State of Haryana

.....Respondent

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Vishal Yadav, Advocate
for the petitioner.

Ms. Upasana Dhawan, AAG, Haryana.

VIKAS BAHL, J. (ORAL)

CRM-15380-2023

1. This is an application filed under Section 5 of the Limitation Act for condonation of delay of 20 days in filing the revision petition.

2. For the reasons stated in the application, which is duly supported by an affidavit, the same is allowed and the delay of 20 days in filing the present revision petition is condoned.

CRM-21130-2023

1. This is an application under Section 482 Cr.P.C. for placing on record the Social Investigation Report as Annexure P-7.

2. For the reasons stated in the application, which is duly supported by an affidavit, the same is allowed and the copy of Social

Investigation Report (Annexure P-7) is taken on record, subject to all just exceptions.

CRR-908-2023

1. Challenge in the present criminal revision is to the order dated 30.09.2022, vide which the application filed by the petitioner under Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short “Act of 2015”) has been dismissed by the Principal Magistrate, Juvenile Justice Board, Jhajjar. Challenge is also to the order dated 16.12.2022 vide which the appeal filed against the said order has been dismissed by the Additional Sessions Judge, Jhajjar.

2. Learned counsel for the petitioner has submitted that the petitioner has been in custody since 16.10.2021 and out of 46 witnesses, none have been examined and thus, the trial is likely to take time. It is further submitted that the petitioner is not involved in any other case and the previous bail application of the petitioner was filed under Section 439 Cr.P.C. and the same was withdrawn on 29.08.2022 in order to apply for bail in accordance with law since the petitioner is a juvenile. It is also submitted that after the passing of the said order, the petitioner had moved an application under Section 12 of the Act of 2015, which has been rejected by both the authorities. It is stated that the present FIR has been registered against unknown persons and as per the case of the prosecution, the deceased had suffered one gun shot injury, which has been alleged to have been inflicted by co-accused, namely, Himanshu @ Chitu and the present petitioner has not been alleged to have been given any injury to the deceased. It is further stated that even the car which has

been allegedly stolen was not recovered from the present petitioner. It is submitted that a perusal of the Social Investigation Report would show that the petitioner is studying in 11th Class and has already passed 10th Class and he is fond of watching television and playing cricket and to a specific query put to him as to whether, is it a good thing to kill someone, he has specifically stated that no, it is not a good thing to kill someone. It is further submitted that a reading of the Social Investigation Report would also suggest that the case of the petitioner would not fall within the exception of Section 12 of the Act of 2015. It is further submitted that the impugned orders are in violation of Section 12 of the Act of 2015 and for the said purpose, reliance has been placed upon the judgment of a Co-ordinate Bench of this Court passed in ***CRR-1019 of 2020*** titled as **“Gurkirat @ Gora Vs. State of Haryana”**.

3. Learned State counsel, on the other hand, has opposed the present petition and has submitted that recovery of knife has been made from the present petitioner and as per the case of the prosecution, the present petitioner had also accompanied the other accused persons including Himanshu @ Chitu, for committing dacoity and had snatched the car of the deceased. It is further there is likelihood that the petitioner would indulge in criminal activities in the future.

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

5. 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 the 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.

6. 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.

7. It has been noticed in the order passed by the Principal Magistrate, Juvenile Justice Board, Jhajjar dated 30.09.2022 that a

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.

8. In the present case, it is not in dispute that the petitioner was a juvenile on the date of the incident. The petitioner has been in custody since 16.10.2021 and out of 46 witnesses, none have been examined and thus, the trial is likely to take time. The petitioner is stated to be not involved in any other case and was not named in the FIR and even as per the case of the prosecution, the deceased had suffered one gut shot injury, which has been inflicted by co-accused of the petitioner, namely, Himanshu @ Chitu. The car which has been stolen has not been recovered from the present petitioner. The petitioner is stated to have accompanied the other co-accused to commit the alleged offence. A perusal of the Social Investigation Report would show that the petitioner is studying in 11th class and had passed class 10th and is fond of watching television and playing cricket and has specifically stated that it is not a good thing to kill someone and thus, it cannot be said that the case of the present petitioner is covered under any of the three exceptions as mentioned in Section 12 of the Act. The Additional Sessions Judge, Jhajjar, while passing the impugned order dated 16.12.2022, has observed that the petitioner may contact criminals and may also be exposed to moral, physical and psychological danger and in the opinion of this Court, the said observations have been made on the basis of surmises and conjectures.

9. Keeping in view the above said facts and circumstances, the present Criminal Revision is allowed and the impugned orders dated 30.09.2022 and 16.12.2022 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/Illaq Magistrate and subject to his not being required in any other case.

10. 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.

11. 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.

May 11, 2023
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes
Yes