

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRR-1008-2023(O&M)

Date of decision : 25.04.2023

Aman

... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR.JUSTICE VIKAS BAHLPresent: Ms.Sharmila Sharma, Advocate
for the petitioner.

Ms.Upasana Dhawan, AAG, Haryana

VIKAS BAHL, J.(ORAL)

1. Challenge in the present revision petition is to the order dated 16.01.2023 vide which the application filed by the petitioner under Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (in short "the Act") in FIR no.416 dated 10.11.2021 registered under Sections 302, 387, 365 read with Section 34 IPC at Police Station Barauda, District Sonipat, has been dismissed. Challenge is also to the order dated 03.02.2023 vide which the appeal filed by the petitioner under Section 101 of the Act has also been dismissed. It is prayed that the application filed by the petitioner under Section 12 of the Act be allowed.

2. Learned counsel for the petitioner has submitted that the petitioner who is a juvenile, has been in custody since 10.11.2021 and had earlier filed a regular bail petition under Section 439 Cr.P.C. for grant of regular bail which was dismissed as withdrawn vide order dated 19.12.2022

pursuance of the said order, an application was filed which has been rejected by the Juvenile Justice Board. It is further submitted that in the present case, there is no eye witness and the complainant Happy, who is brother of the deceased, Ramesh, father of the deceased and Mehtab, uncle of the deceased have been examined as PW-1, PW-2 and PW-3 and all the said three witnesses have not supported the case of the prosecution and have turned hostile. It is stated that there are 34 witnesses, out of which, 13 witnesses have been examined and thus, the trial is likely to take time. It is further submitted that as per the social investigation report, it has been observed that the present petitioner is not of criminal nature and the incident which has been committed is on account of his innocence and the petitioner wants to focus on his studies and to live a civilized life. It is stated that the said social investigation report has not been considered by either of the two authorities while rejecting the application filed by the petitioner. It is further stated that it is on the basis of surmises and conjectures, the said two authorities have come to the conclusion that in case the petitioner is released on bail, then there is an apprehension that he may come in association with unsocial elements as well as other criminals. It is submitted that the impugned orders have been passed without taking into consideration the true import of Section 12 of the Act. Reliance has been placed upon the judgment passed in CRR-1019-2020 titled as “***Gurkirat @ Gora vs. State of Haryana***” and also in CRR-233-2021 titled as “***Vishnu vs. State of Haryana***”

3. On the other hand, learned State counsel, on instructions from ASI Satpal, has submitted that the Board/Court have taken into consideration the relevant factors and have rightly dismissed the application

of the petitioner. It is further submitted that as per the case of the

prosecution, the sister of the petitioner was having a relationship with the deceased and on account of said motive, the petitioner along with other co-accused had killed the deceased. It is stated that a stick (danda) has been recovered from the present petitioner.

4. This Court has heard the learned counsel for the parties and perused the record and is of the opinion that the present criminal revision petition deserves to be allowed and the petitioner deserves to be released on bail.

5. In the present case, the petitioner is a juvenile and his bail application is governed by the provisions of Section 12 of the Act of 2015.

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.”*

6. It has been correctly observed in para 8 of the order of the Juvenile Justice Board that benefit of bail is a matter of right for a child-in-conflict with law and denial thereof is an exception. In the background of the said settled proposition, it is further considered as to whether the impugned orders rejecting the bail have been correctly passed or not.

7. Before proceeding further, it would be apt to make a reference of 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.

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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/Illaq Magistrate.”

A perusal of the above-said case would show that even where

the allegation against the 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.

8. A Coordinate Bench of this Court was pleased to grant bail in **Vishnu's** case (supra) where the allegation was that the petitioner therein had inflicted an injury on the head of the deceased and a blood-stained 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 co-accused were apprehended on 28.05.2020 and they admitted their involvement in the homicide in their disclosure statement.

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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.

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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.”

9. In the present case, neither the Board nor the Court has taken into consideration the fact that the petitioner has been in custody since 10.11.2021 and there are 34 witnesses, out of which, only 13 witnesses have been examined and thus, the trial is likely to take time. There is no eye

Happy, Ramesh and Mehtab have not supported the case of the prosecution as is apparent from their evidence, copies of which have been annexed as Annexures P-5, P-6 and P-7, respectively. The petitioner is not involved in any other case. Perusal of the social investigation report would show that the petitioner is stated not to be of criminal nature and that the petitioner wishes to focus on his studies and wishes to live a civilized life. The Court and the Board while rejecting the social investigation report have only on the basis of surmises and conjectures, come to the conclusion that if he is released on bail, there is an apprehension that the petitioner would come in association with unsocial elements as well as other criminals.

10. Accordingly, the present criminal revision petition is allowed and the order dated 16.01.2023 as well as the order dated 03.02.2023 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 concerned trial Court/Duty Magistrate/Illaqa Magistrate.

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

12. Pending miscellaneous applications, if any, shall stand disposed of in view of the above.

(VIKAS BAHL)
JUDGE

April 25, 2023
Davinder Kumar

Whether speaking / reasoned
Whether reportable

Yes/No
Yes/No