

CRR-1385-2023 (O&M)

222 (2nd case)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-1385-2023 (O&M)

Date of decision: August 22, 2023

Prince Kumar Pathak

....Petitioner

versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Rahul Makkar, Advocate for petitioner.

Mr. Vikas Bhardwaj, AAG Haryana.

ARUN MONGA, J. (ORAL)**CRM-24744-2023**

For the reasons stated in application, same is allowed. Delay of 81 days in filing revision is condoned, subject to all just exceptions.

Main case (O&M)

Petitioner, a 15 years old juvenile at the time of crime in question, challenges orders dated 05.12.2022 and 26.05.2022 passed by learned Courts below, whereby he has been declined bail in a case FIR No.211 dated 28.03.2022, registered under Sections 302 read with Section 34 of the Indian Penal Code, 1860 (for short 'IPC') and Section 3(2)(v) of the Scheduled Caste and the Scheduled Tribe (Prevention of Atrocities) Act, 1989 (for short 'SC/ST Act'), at Police Station City Rohtak, District Rohtak.

2. Per prosecution version, on 27.03.2022, while Sunil (the complainant) was at his home, he received information that Subodh, his brother was declared brought dead by doctors. His brother had serious injury marks on his body. Deceased died of grievous injuries inflicted on him by someone. Upon verification, complainant got to know that Subodh Ram had sustained these injuries in Ram Ricchpal Colony. Subodh was murdered by being hit with a brick on his head. His brother did not harbor any enmity against anyone. Culprits responsible for this crime thus remained unidentified. During

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investigation, petitioner was arrested as a suspect on 29.03.2022 and is in custody since then.

3. Learned counsel for petitioner submits that petitioner has been falsely implicated on the basis of disclosure statement. At the time of alleged incident, petitioner was around 15-year old juvenile. He submits that petitioner was not named in the FIR. He submits that per medical report/ PMR of deceased, it was found that deceased was under influence of liquor. Deceased died of a fall as he hit his head on the road. There is no piece of evidence to show complicity of the petitioner in the commission of alleged offence. There is no eyewitness to the alleged occurrence. Learned counsel for petitioner further submits that per prosecution, in the CCTV footage, petitioner was allegedly seen running around the place of occurrence. There is no medical evidence regarding alleged physical assault on the deceased.

4. On the other hand, learned State counsel, on instructions from ASI Sohan Lal, opposes the bail petition. He submits that petitioner has committed a serious offence. Learned Courts below have rightly declined to grant any concession of bail to the petitioner. Clothes worn by petitioner at the time of occurrence stained with blood were recovered from the petitioner.

5. I have heard rival contentions of learned counsels for the parties and have gone through the case file.

6. Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short 'JJ Act') reads as under:-

“12. (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 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 subsection (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.”

7. Learned Courts below while declining bail to the petitioner have not considered the aforesaid provisions in right perspective. Bail to juvenile under Section 12 of the JJ Act is a right and rejection thereof is an exception. It is stated that challan has been presented. Investigation is complete *qua* petitioner. His custody is not required for any further investigation. Out of total 28 witnesses, only 01 is stated to have been examined so far. Petitioner has not been named in the FIR by the complainant. No motive or enmity is alleged. He is alleged to be merely present around the spot of occurrence and has been arrested on the basis of CCTV footage. It is nowhere stated by the prosecution that any family member of the petitioner is having any criminal record in past or at present, any of them is indulged in illegal activities of any kind. It is also not borne out from perusal of the record that release of the petitioner is likely to bring him into association with any known criminal or expose to moral, physical or psychological danger or his release would defeat the ends of justice.

7.1. Petitioner was arrested on 29.03.2022 and is in continuous incarceration since then. Trial is likely to take long time. Whereas, petitioner has already been in preventive custody for the past more than 1 year and four months.

7.2. Petitioner is stated to be juvenile and his long incarceration will jeopardize his future prospects and tarnish his image in society permanently.

8. Considering the overall scenario and without commenting on the merits of the case, the instant petition is allowed. I am of the view that no useful purpose would be served to keep the petitioner in further preventive custody.

9. Accordingly, impugned orders dated 05.12.2022 and 26.05.2022 passed by learned Courts below are set aside. Petitioner is ordered to be released on bail on his

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furnishing bail bonds and surety bonds to the satisfaction of learned Principal Magistrate, Juvenile Justice Board/Chief Judicial Magistrate/Duty Magistrate, Rohtak.

10. In case, petitioner is found to be involved or gets involved in any offence while on bail, the prosecution shall be at liberty to seek cancellation of his bail in the instant case.
11. Any observations made and/or submissions noted hereinabove shall not have any effect on merits of the case as the same are for limited purpose of bail hearing alone and learned trial Court shall proceed without being influenced with this order.
12. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

August 22, 2023
Mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No