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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-1562-2023 (O&M)

Date of decision: July 12, 2023

Shokin

....Petitioner

versus

State of Haryana

....Respondent

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

Mr. Vikas Bhardwaj, AAG Haryana.

ARUN MONGA, J. (ORAL)

Petitioner, now stated to be 18-year old, allegedly implicated when he was a juvenile, challenges impugned order dated 02.05.2023 and 25.05.2023 passed by learned Courts below whereby he was declined bail in case FIR No.987 dated 09.11.2022, registered under Section 304 read with Section 34 of the Indian Penal Code, 1860 (for short 'IPC'), at Police Station Chandni Bagh, Panipat.

2. Per prosecution version, on the intervening night of 07/08.11.2022, Firoj son of Shamsheeda (*Bua* of complainant Tajudeen) informed the complainant on telephone that Ashif is having a fight with complainant's brother Ajhrudeen. When he reached the spot, he found Ajhrudeen was lying there having sustained multiple injuries in his abdomen. Firoj told him Ashif, his father, brother, uncle and his friend collectively caused injuries to Ajhrudeen before running away. He took Ajhrudeen to his room. Then he took him to Civil Hospital, Panipat where doctors referred him to Kalpana Chawla Medical College, Karnal. Due to late night, ultrasound of his brother could not be conducted and complainant took his brother back home. Next day, he again took his brother to Civil Hospital, Panipat where doctors again referred him to aforesaid medical college. During treatment, brother of the complainant passed away.

An FIR was registered in this regard.

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3. Learned counsel for petitioner submits that merely on the basis of CCTV footage, which reflected that petitioner, a juvenile then, was present on the scene of occurrence, he has been apprehended by the police. Notwithstanding, that he has neither been named by the complainant in the FIR nor is there any previous history of any enmity between deceased's family and family of the petitioner. Also neither any overt act has been attributed to him nor during investigation his participation, in any manner, was discovered, which would have resulted in causing any fatal injury to the deceased.

3.1. Learned counsel for the petitioner submits that in case, the juvenile or any of his family member does not have any criminal history, he ought to be granted bail, even if implicated under Section 302 of IPC. In support of his contention, he relies on decisions of this Court rendered in the case of **Atul Kumar and another versus State of Haryana¹** and **Satbir versus State of Haryana²**.

4. On the other hand, learned State counsel, on instructions from SHO Sunil Kumar opposes the bail petition. He submits that petitioner has committed a serious offence and learned Courts below have rightly declined to grant any concession of bail to 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

¹ 2003 (4) R.C.R. (Criminal) 404

² 2011 (2) R.C.R. (Criminal) 621

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. Investigation is complete *qua* petitioner. None of the accused, alleged to have caused injuries to the deceased, were armed with any weapon. Petitioner has not been attributed any injury to the deceased. He has also not been named in the FIR by the complainant. Petitioner is stated to be merely present on 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. In this case, petitioner was arrested on 12.12.2022 and is in continuous incarceration since then. Trial is likely to take long time. Whereas, petitioner has already been languishing in jail for the past more than 1 and half year in preventive custody. Petitioner is now stated to be 18-year young boy.

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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 02.05.2023 and 25.05.2023 passed by learned Courts below are set aside. Petitioner is ordered to be released on bail on his furnishing bail bonds and surety bonds to the satisfaction of learned Principal Magistrate, Juvenile Justice Board/Chief Judicial Magistrate, Panipat.
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. It is made clear that any observations and/or submissions noted hereinabove shall not have any effect on merits of the case as the same are for the limited purpose of hearing the instant bail petition 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

July 12, 2023

mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No