

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CRR-1219-2020 (O&M)  
Date of Decision: May 05, 2023

A (Child in Conflict with Law) ...Petitioner

Versus

State of Haryana ...Respondent

**CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA**

**Present: -** Mr. Lakshay Bajaj, Advocate for the petitioner.

Mr. Randhir Singh, Addl. A.G., Haryana.

**DEEPAK GUPTA, J.**

By way of this revision petition filed under Section 401 of the Code of Criminal Procedure read with Section 12 of the Juvenile Justice (Care & Protection of Children) Act, 2015 [wrongly mentioned as 2000] (hereinafter to be referred as 'the Act, 2015'), petitioner, who is a child in conflict with law, has prayed for grant of regular bail in case FIR No.732 dated 24.12.2019, registered at Police Station Qilla Panipat, under Section 346 IPC (Sections 148, 149, 201, 302, 328 and 396 of IPC added later on; whereas Section 346 IPC was deleted). Petitioner had earlier applied for regular bail before the Juvenile Justice Board, Panipat, but his application was declined vide order dated 30.09.2020 (Annexure P-2). He filed the appeal against that order, but the same was dismissed by learned Addl. Sessions Judge, Panipat vide order dated 27.10.2020.

2. Facts emerging on perusal of record are Mohammad Aslam (deceased) S/o Mufsil was deputed as DBO in Bandhan Bank, DSC

Panipat-2, Model Town, Panipat, where Nimai Sarkar was the manager. On 23.12.2019, said Mohammad Aslam went for collecting loan installments at Babail Road, Bharat Nagar and as per inquiry, he had collected an amount of ₹91,855/-. He was also having HHD machine, mobile phone and other papers. He went missing and his mobile phone was found switched off. On 24.12.2019, present FIR was lodged under Section 346 IPC on the complaint of Nimai Sarkar regarding missing of Mohammad Aslam. On 26.12.2019, dead body of an unknown person was found in *nullah* of village Raja Kheri, which was kept in Civil Hospital, Panipat. On 27.12.2019, the dead body was identified to be that of Mohammad Aslam. Mohd. Mufsil, father of deceased then made a complaint, stating therein that his son had gone to the house of Sunita W/o Vinod to collect the loan installments and thereafter, he went missing and on making inquiries by him at personal level along with the bank officials, they were sure that Sunita in conspiracy with her son Vijay, Paras S/o Sat Narain, Gaurav S/o Surjit and A (*CCL- petitioner herein*) had killed him (Mohammad Aslam) and looted the collected loan installments of ₹91,855/-, HHD machine, mobile phone and other papers.

3. (a) Investigation was carried out. Call details record of deceased was obtained. Postmortem on the dead body of Mohammad Aslam was got conducted and as per post-mortem report, the cause of death was disclosed to be combined effect of head injury, asphyxia secondary to constriction of neck structures by a ligature & burning. A (*CCL- petitioner*), Gaurav and Vijay were arrested on 27.12.2019 and they

suffered disclosure statements.

(b) As per disclosure statement of the A (CCL - petitioner), he, Vijay and Parsu Ram @ Paras were friends. Parsu Ram @ Paras was residing in a rented room adjacent to the room of Sunita at Bharat Nagar. Sunita had taken loan. Bank worker Mohammad Aslam (deceased) used to collect installments of loan. Sunita told her son Vijay and Parsu Ram @ Paras regarding collection of huge amount of installments of loan by Aslam and that they made a plan to commit his murder and loot money from him. It was stated further that on 23.12.2019, as per plan, Sunita made a telephonic call to Mohammad Aslam and called him to her room. Parsu Ram @ Paras administered sleeping medicines, making him unconscious. Then Arvind, Parsu Ram @ Paras and Vijay took Mohammad Aslam to the room of Parsu Ram @ Paras, where a stone was hit on the head of Mohammad Aslam and he was also strangulated with scarf by Parsu Ram @ Paras supplied by Sunita. Vijay also strangulated him with electric wire. They snatched ₹91,855/-, mobile phone, machine and other documents. On the three-wheeler of one Arif, dead body was taken in a bag and thrown in the nullah. The dead body was also put on fire to destroy the identity. He also disclosed about the distribution of money and other articles amongst them. Based on the disclosure statement, recoveries were got effected from them. From the possession of the petitioner, amount of ₹10,000/- and a mobile phone is stated to have been recovered.

(c) Sunita was arrested on 27.12.2019, who also suffered a

disclosure statement disclosing the manner, in which she remained involved in the crime in conspiracy with the petitioner and others. Parsu Ram @ Paras was arrested on 31.12.2019, who also suffered disclosure statement on the same lines and apart from demarcating the place of crime, got effected recovery of ₹15,000/-, three-wheeler; and documents of the deceased Mohammad Aslam.

(d) After completion of investigation, final report under Section 173 Cr.P.C. was filed to prosecute petitioner besides Parsu Ram @ Paras, Sunita, Vijay and Gaurav. Trial Court found the petitioner to be a juvenile and so, supplementary challan against him was presented before the Juvenile Justice Board. It is disclosed that petitioner was found to be above 16 and below 18 years of age at the time of commission of the crime and after necessary inquiry contemplated under Section 15 of the Act, 2015, directed to be tried as an adult and so, the case was sent to the Children Court, where charges against the petitioner were framed on 10.03.2021. As per police report, out of 29 witnesses cited by the prosecution, 8 have already been examined and case is now fixed for 02.05.2023 for prosecution evidence.

4. (i) It is contended by Ld. Counsel for the petitioner that reasons given by learned Addl. Sessions Judge, Panipat declining the bail to the petitioner, are not sustainable, as it has been observed that release of the petitioner on bail would defeat the ends of justice, as he is involved in grave offence. Learned counsel submits that Section 12 of the Act, 2015 incorporates non-obstante clause, which means that irrespective of

anything contained in the Code of Criminal Procedure or in any other law for the time in force, a juvenile in conflict with law has to be released on bail. It is contended that refusal of bail is possible only in three eventualities as explained in proviso to Section 12 (1) of the Act, i.e., in case there appears reasonable grounds for believing that release of such a juvenile is likely to bring him into association with any known criminal; or that his release would expose the juvenile to moral, physical or psychological danger; or that his release would defeat the ends of justice. Learned counsel contends that involvement in a grave offence is not incorporated to be a ground for refusal of bail.

(ii) Similarly, Juvenile Justice Board, while declining bail to the petitioner, observed that there were chances of petitioner being exposed to social, moral, physical and psychological danger and that there are high risk of the petitioner keeping involved in the bad company, but these observations are without any basis in the absence of any material to show that petitioner or his family members are having any criminal background or association with any criminal.

(iii) Learned counsel for the petitioner contends further that even if the case is considered on merits, it would be apparent that prosecution case is dependent upon very weak circumstantial evidence, as there is no last seen evidence. Learned counsel has pointed out towards FSL report to contend that no common poison was detected in the viscera of the deceased ruling out any intoxication of the deceased, as is mentioned in the alleged disclosure statement. Further attention is drawn towards

another report of FSL, as per which no petrol, kerosene, diesel or residues were detected on the partially burnt small pieces of clothes along with wet ashes and soil found near the dead body and so, prosecution case falls flat qua the disclosure statement to the effect that dead body was burnt with petrol. Learned counsel further contends that recovery of cash amount and mobile phone is shown from the petitioner. No independent witness was joined at the time of recovery. Cash amount cannot be connected with the allegedly looted amount from the deceased in the absence of any identification and as far as the mobile is concerned it belonged to the father of the petitioner.

(iv) Learned counsel submits further that petitioner is in custody since 27.12.2019, i.e., more than 3 years and 4 months. Only 8 witnesses out of 29 witnesses have been examined so far and thus, the trial is likely to take long time to conclude and so, considering all these circumstances, the petitioner be allowed bail.

5. Learned State counsel opposed the bail petition by submitting that learned Juvenile Justice Board and learned Addl. Sessions Judge, Panipat have given cogent reasons to decline the bail, as release of the petitioner on bail in such a heinous crime will defeat the ends of justice, which is one of the reasons mentioned in Section 12 of the Act, 2015 to decline the bail.

6. I have considered submissions of both the sides and perused the paper book.

7. It is not in dispute that petitioner is a child in conflict with

law and at the time of crime, his age was above 16 years, though below 18 years. There can be no doubt that offence of murder is a heinous crime. However, Section 12 of the Act, 2015 contains a mandate to release a child on bail, when he is apprehended or detained in connection with an offence. It is a special provision, which stands to the exclusion of Code of Criminal Procedure. Parameters for considering an application for bail filed by a juvenile under Section 12 of the Act are clearly distinguishable from the application filed under Section 439 Cr.P.C. Even after a juvenile is to be tried as an adult, still his bail is to be considered under the parameters provided under Section 12 of the Act. A similar view has been taken by Delhi High Court in *CCL 'A' v. State (NCT of Delhi)*, 2021 Cri.L.J.1251. As is evident from Section 12 of the Act, the only embargo in not releasing such a child is that there appears reasonable ground for believing that his release is likely to bring him into association with any known criminal; or to expose him to moral, physical or psychological danger; or that release of such a person would defeat the ends of justice.

8. Perusal of the order dated 30.09.2020 passed by learned Juvenile Justice Board reveals that there is reference of social background report of the petitioner, stating therein that he was in bad company and used to indulge in anti-social activities and does not even obey his parents. In the considered opinion of this Court, said observations made in the social investigation report cannot be a reason to decline bail to a juvenile in the absence of any material to show that in case of release, he

is likely to be associated with any known criminal. Learned Addl. Sessions Judge, Panipat, while declining bail observed that his release would defeat the ends of justice, as he is involved in grave offence of murder. Simple involvement in offence of murder cannot be a reason to hold that release of the petitioner-child is likely to defeat the ends of justice. Circumstances of the case as well as the social background report of the petitioner is required to be looked into.

9. It will also be not out of place to mention that learned Addl. Sessions Judge, Panipat also observed that consequent to the disclosure statement of the petitioner, he got effected recovery of mobile phone and bank machine, besides ₹10,000/- out of the looted amount. However, in the status report filed by the State, there is no reference of recovery of the bank machine, which fact has been conceded by learned State counsel. Even the mobile phone as recovered from the petitioner, is stated to be belonging to his father. Thus, none of the exceptions provided under Section 12 of the Act, under which bail to the juvenile can be declined, is applicable in this case.

10. Apart from above, even if the matter is considered on merits, it is noticed that case is admittedly dependent upon circumstantial evidence. There is no last seen evidence. It is difficult to comment at this stage the connection of the amount recovered from the petitioner with the looted amount in the absence of any identification mark. It is conceded fact that neither the HHD machine nor the mobile phone of the deceased have been recovered during investigation. Out of 29 witnesses cited by

the prosecution, only 8 have been examined so far, despite the fact that charges were framed in March, 2021. Petitioner is in custody for the last more than 3 years and 4 months, with no criminal antecedent.

11. It is further very important to notice that similarly placed co-accused Parsu Ram @ Paras, who is being tried as an adult, has been allowed bail by this Court today in CRM-M-40713-2022. It does not appeal to the reason that bail to a juvenile is to be tested only with reference to the disentitling conditions mentioned in proviso to Section 12(1) of the Act, even if he is entitled to be released on the basis of merits of the case. A similar issue was considered by Allahabad High Court in case of ***“Dharmender -Juvenile v. State of U.P. and others”***, 2018(7) ADJ 864, wherein it was observed as under: -

*"10. The matter can be looked at from another vantage. In case the revisionist were an adult and stood charged of the offence that he faces with a weak circumstantial evidence of last seen and confession to the police, in all probability, it would have entitled him to bail pending trial. If on the kind of evidence forthcoming an adult would be entitled to bail, denying bail to a child in conflict with law may be denying the juvenile/ child in conflict with law the equal protection of laws guaranteed under Article 14 of the Constitution.*

*11. The rule in Section 12(1) of the Act is in favour of bail always to a juvenile/ child in conflict with law except when the case falls into one or the other categories denial contemplated by the proviso. It is not the rule about bail in Section 12 of the Act that in case a child in conflict with law is brought before the Board or Court, his case is not to be seen on merits prima facie about his complicity at all for the purpose granting him bail; and all that has been done is to see if his case falls is one or the other exceptions, where he can be denied bail. The rule in Section 12*

*sanctioning bail universally to every child in conflict with law presupposes that there is a prima facie case against him in the assessment of the Board or the Court based on the evidence placed at that stage. It is where a case against a child in conflict with law is prima facie made out that the rule in Section 12(1) of the Act that sanctions bail as a rule, except the three categories contemplated by the proviso comes into play. It is certainly not the rule, and, in the opinion of the Court cannot be so, that a case on materials and evidence collected not being made out against a child at all, his case has to be tested on the three parameters where bail may be denied presuming that a prima facie case is constructively there. Thus, it would always have to be seen whether a case prima facie on merits against a child in conflict with law is there on the basis of material produced by the prosecution against him. If it is found that a prima facie case on the basis of material produced by the prosecution is there that would have led to a denial of a bail to an adult offender, in that case also the Rule in Section 12(1) of the Act mandates that bail is to be granted to a juvenile/ child in conflict with law except where his case falls into any of the three disentitling categories contemplated by the proviso."*

*12. In the opinion of this Court, therefore, the perception that merits of the case on the basis of prima facie evidence is absolutely irrelevant to a juvenile's bail plea under the Act would not be in conformity with the law. The catena of decisions that speak about merits of the case or the charge against a juvenile being irrelevant, proceed on facts and not an assumption that a case on merits is made out, and, not where the case is not at all made out prima facie. It is not that a child alleged to be in conflict with law against whom there is not iota of evidence to connect him to the crime would still have bail denied to him because his case may be placed in or the other disentitling categories under the proviso to Section 12(1) of the Act. If this kind of a construction were to be adopted it might expose the provisions of Section 12(1) of the Act to challenge on ground of*

*violating the guarantee of equal protection of laws enshrined in Article 14 of the Constitution. It is an enduring principle that a construction that lends a statute to challenge about its constitutionality should be eschewed and one that saves and upholds its vires is to be adopted.”*

12. Having regard to the entire discussion as above and particularly considering the fact that petitioner is in custody for the last more than 3 years and 4 months and out of 29 witnesses, only 8 have been examined so far and also keeping in view the fact that similarly placed adult co-accused, facing trial before the trial Court has already been granted bail, but without commenting anything further on the merits of the case, present petition is allowed. Petitioner is ordered to be released on bail on his furnishing bail bonds and surety bonds to the satisfaction of learned Trial Court/Children Court concerned. Nothing expressed in this order shall be taken as opinion of this court while deciding the case on merits.

**May 05, 2023**

Sarita

**(DEEPAK GUPTA)**  
**JUDGE**

Whether reasoned/speaking: Yes/No

Whether reportable: Yes/No