

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

244-A

CRR-1740-2022

Date of Decision: 05.01.2023

Ishant (Juvenile)

.... Petitioner

Versus

State of Haryana

.... Respondent

CORAM: HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: - Mr. Partap Singh, Advocate for the petitioner.

Mr. Gaurav Bansal, Assistant Advocate General, Haryana.

ASHOK KUMAR VERMA, J. (ORAL)

Challenge in the present petition is to the order dated 02.07.2022 passed by learned Addl. Sessions Judge, Rohtak, whereby appeal filed by the petitioner against the order dated 30.05.2022 rendered by the learned Principal Magistrate, Juvenile Justice Board, Rohtak, dismissing the bail application of the petitioner (child-in-conflict with law) in case FIR No. 83 dated 16.02.2022 registered under Sections 307 and 341 read with Section 34 IPC and Section 25 of the Arms Act (Sections 201 and 120-B IPC and Section 27 of the Arms Act, were added later on) at Police Station Kalanour, District Rohtak, was dismissed.

Brief facts necessary for decision of the present revision are that the aforesaid FIR was registered on the complaint of one Sahil, who

had stated that earlier there were some altercations between him, Deepu and the present petitioner. On 16.02.2022 around 2.00 P.M., when he was coming back to village on his motorcycle from coaching centre, Deepu and the present petitioner met him on the way. They stopped him and the petitioner had caught his collar. Deepu aforesaid took out a pistol and fired upon him with an intention to kill him, which hit on his right thigh. Thereafter, the petitioner also fired upon him with the said pistol which also hit on his thigh. Thereafter, they both fled away along with the weapon by threatening to kill him. During the course of investigation, the petitioner was arrested. The petitioner was found to be a juvenile and his case was referred to the Juvenile Justice Board, Rohtak. The bail application filed by the petitioner was dismissed by the learned Principal Magistrate, Juvenile Justice Board, Rohtak vide order dated 30.05.2022. The appeal preferred by the petitioner against the aforesaid order was also dismissed by the Appellate Court vide impugned order dated 02.07.2022. Hence, the present revision.

Learned counsel for the petitioner submits that the petitioner was a juvenile on the date of the alleged occurrence i.e. 16.02.2022; that date of birth of the petitioner is 08.01.2005, as such he was less than 18 years of age on the relevant date; and that the petitioner ought to have been dealt with under Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015. Birth certificate of the petitioner dated 10.01.2005 is annexed as Annexure P-1. Further it is submitted that Section 12 of the Act prescribes three circumstances under which the bail application of the child in conflict under law, could be dismissed and that

none of the said circumstances, was attracted in the case of the petitioner and as such, denial of bail to the petitioner is legally untenable. He further submits that the Courts below have not considered the entitlement of the petitioner in terms of Section 12 of the Act, which could not have been overlooked even in the situation that he was sent up to face trial by the Juvenile Justice Board in Children's Court. Learned counsel for the petitioner has also placed on record certified copies of statements of PW-1 to P-4, to contend that out of total 26 prosecution witnesses, the prosecution had already examined four witnesses, namely; PW-1 Sahil (complainant), PW-2 Vikas, PW-3 Anita and PW-4 Jitender and all of them have been declared hostile as they have not supported the prosecution version. Even the complainant had not identified the petitioner. The petitioner is in custody since 02.03.2022. No useful purpose will be served by further detention of the petitioner in custody.

On the other hand, learned State counsel vehemently opposed the prayer made in this petition.

I have heard the learned counsel for the parties.

There is no denying the fact that as on the date of occurrence, the petitioner was juvenile. Thus, while dealing with the bail petition of the petitioner, the mandate of Section 12 of the Act, is required to be followed. Section 12 of the Act would read as under:-

“12. (1) When any person, who is apparently a child and is alleged to have committed a bailable or nonbailable 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 sub section (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. Apprehension of child alleged to be in conflict with law. Role of person in whose charge child in conflict with law is placed.

(4) When a child in conflict with law is unable to fulfill 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."

A perusal thereof would show that the conditions for denial of the bail to the juvenile are stipulated under the proviso to Section 12(1) of the Act. The reasoning given by the Juvenile Justice Board that if the petitioner is released on bail, he would be exposed to moral, physical and psychological danger is not attracted.

More so, out of total 26 prosecution witnesses and 04 have already been examined by the trial Court. As per copies of statements of PW-1 to PW-4, all of them have been declared hostile as they have not supported the prosecution version. Even the complainant/injured-Sahil, had not identified the petitioner. Out of the remaining 22 prosecution witnesses maximum are official witnesses. There is no material or

circumstance on record to hold that if released on bail, the petitioner would come into contact with the known criminals. The reasoning of the Board that it would expose the petitioner to the psychological danger does also not seem to be emanating from the given circumstances. The FIR was registered on 16.02.2022 and the petitioner has been in protective custody since 02.03.2022.

In view of the above, the present petition is allowed. The orders dated 02.07.2022 and 30.05.2022 passed by the Courts below, qua denying the petitioner regular bail, are set aside. The petitioner is ordered to be released on bail to the satisfaction of the learned trial Court/Duty Magistrate.

January 05, 2023
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(ASHOK KUMAR VERMA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No