

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

1. CRM-M-22942-2022

Neeraj . . . Petitioner

Vs.

State of Haryana Respondent

2. CRR-1261-2020

S (Minor) through her mother K Petitioner
[Name withheld to hide identity]

Vs.

State of Haryana Respondent

Reserved on: 03.08.2023
Pronounced on: 16.08.2023

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present: - Mr.Sukesh Jindal, Advocate,
for the petitioner (in CRM-M-22942-2022)

Mr.R.S. Bains, Senior Advocate with
Mr.M.S. Chauhan, Advocate,
for the petitioner (in CRR-1261-2020)

Mr. Parveen Kumar Aggarwal, DAG, Haryana

DEEPAK GUPTA, J.

This order shall dispose of two petitions titled above, as both of them have arisen out of the same FIR No.182 dated 30.06.2020 registered at Police Station Barauda, District Sonipat under Section 302, 148, 149, 186, 323, 307, 353 and 404 of the IPC and Section 25 of the Arms Act.

2. CRM-M-22942-2022 is filed by petitioner Neeraj under Section 439 of the Cr.P.C. with prayer for grant of regular bail; whereas in

CRR-1261-2020 filed by juvenile S, challenge has been given to the order dated 05.10.2020 passed by the Id. Additional Sessions Judge, Sonipat, dismissing the appeal against order dated 08.09.2020 passed by Juvenile Justice Board, Sonipat, declining the bail to the said minor petitioner 'S' (name withheld).

FIR Version:

3. As emerge on perusal of paper book, on 30.06.2020, information was received at Police Station Barauda, District Sonipat that two police officials in uniform were lying dead at Jind-Gohana Road near Hariyali Park of Village Butana and motorcycle bearing No.HR-10-Y-1465 was parked near them. On getting this information through ASI Sanjay, SHO Police Station Barauda reached the spot and found the deceased police officials to be Constable Ravinder No.564 and SPO Kaptan No.213, who had gone on night duty on the Government vehicle No.HR-10-Y-1465. Their dead bodies were lying on the side of the road, drenched in blood and they had been killed by causing injuries with sharp-edged weapon. On the statement of ASI Sanjay, FIR was registered.

Police Investigation:

4. During investigation, the physical evidence was collected from the spot. Postmortem examination of the two deceased was got conducted. Deceased Kaptan was found to have suffered 5 sharp cut injuries, whereas deceased Ravinder was found to have suffered 4 injuries. During postmortem examination of the deceased Ravinder, letters 'HR56B-8192' were found to be written in blue ink on his palm. Said number was found to be of a car make i-10 grand and its registered owner as Gurjit son of Roshan Lal. On joining the investigation by father of Gurjit, it was found that said

car had already been sold to Sandeep son of Jogender. Said Sandeep was apprehended along with the car on 1.7.2020.

5. On interrogation, said Sandeep disclosed that on 29.06.2020, his friends Amit @ Sunara, Vikas and one other boy (later on identified as petitioner Neeraj), who was the friend of Amit, had met him. He was told by Amit and his friend that they were having relations with girls Asha and 'S' (petitioner) and that they were going to meet them. All of them planned to visit village Butana. After reaching in front of Hariyali Beej Store in Village Butana at about 12 in the night, they consumed liquor and then he (Sandeep) & Amit went to the village to bring the two girls. After arrival of two girls, Amit along with petitioner 'S' occupied the car, whereas Asha and Amit's friend (Neeraj) were sitting on another corner. It was further disclosed by him that Amit and petitioner 'S' were indulging in intercourse, when at about 2-2.30 AM, a police motorcycle came and started making enquiries from them. As per Sandeep, Asha and 'S' (petitioner) disclosed that police officials knew them being posted in the police post of their village and asked to kill them to avoid any scenario in the village and then Amit took out a knife, whereas he (Sandeep), petitioner 'S' and Asha thrashed the police officials and that it is Amit, who stabbed repeatedly at the two police officials namely, Ravinder and Kaptan, due to which they died. Said Sandeep also got recovered the clothes worn by him at the time of occurrence.

6. Further prosecution case is that on the basis of disclosure statement of accused Sandeep, the police party proceeded to arrest Amit and Vikas, who when chased caused knife injuries to the police officials.

Though Vikas succeeded in fleeing away, but Amit @ Sunara was killed in

police encounter having suffered bullet injuries. Regarding this incident, FIR No.263 dated 01.07.2020 was registered at Police Station, City Jind under Sections 186, 307, 353, 333/34 IPC and Section 25 of the Arms Act.

7. On 03.07.2020, accused Asha and petitioner 'S' were arrested. In their respective disclosure statements, they admitted guilt, as per which petitioner 'S' had developed relations with Amit, whereas Asha was having relations with Neeraj (petitioner) and they had gone to meet them on the night intervening 29/30.06.2020. They also narrated the entire factum and the manner of occurrence. They also demarcated the place of crime. As petitioner 'S' was found to be juvenile, she was sent to observation home.

8. On 06.07.2020, accused Vikas and Neeraj were arrested. Both of them, in their respective disclosure statements, admitted the guilt and narrated the sequence of events. Vikas got recovered the clothes worn at the time of occurrence. Both of them also identified the knife used by Amit at the time of occurrence, which had been recovered vide case FIR No.263 dated 01.07.2020 registered at Police Station Jind, which was got transferred in this case. Call detail reports and customer application forms of the mobile of all the accused were collected. After concluding investigation, final report under Section 173 Cr.P.C. against Sandeep, Asha, Neeraj and Vikas was filed in the Court, whereas final report qua juvenile 'S' was filed before the Juvenile Justice Board.

9. The petitioner 'S' applied for bail before the Juvenile Justice Board, but the same was declined vide order dated 08.09.2020. Appeal filed by the said juvenile-petitioner 'S' was dismissed by the Court of Id. Additional Sessions Judge, Sonipat vide impugned order dated 05.10.2020.

Contentions on behalf of Juvenile 'S':

10. It is contended by Id. counsel appearing for juvenile petitioner 'S' that when her mother came to know about the incident, she herself took her daughter 'S' and niece Asha to the Police Station on 02.07.2020 on coming to know about the involvement of Amit in the murder, so as to explain police officials that they ('S' and her cousin) had not killed the police officials and rather, they had been killed by Amit. It is alleged that petitioner and her cousin were taken to police custody and that 10-12 police officials, committed rape upon her and her cousin. She was brutally beaten at the police station by the police officials and even the bottles were inserted into her private parts. Her cousin was tortured and molested. They were not provided any medical help. On 18.07.2020, when the mother of the petitioner went to Central Jail, Karnal to meet the petitioner, she was told about the entire incident and the complaint was made at Police Station Barauda resulting into the registration of FIR No.65 dated 30.07.2020 at Police Station, Women, Sonipat under Section 6 of the POCSO Act and Sections 376 (2) (a) & 376-D IPC, in which names of three police officials Sanjay, Radhe and Sandeep were specifically mentioned.

11. It is submitted further that in fact petitioner had gone to meet Amit and his friends, and as they were sitting in the car and others were standing at some distance, the two police officials Constable Ravinder and SPO Kaptan, came in drunk condition, started questioning them, demanded money from Amit on the pretext that how they were sitting in the car at late night. Not only this, the police officials started molesting the petitioner 'S' and her cousin and asked Amit to send both of them to the police station for a night. On the protest raised by Amit, heated arguments took place and in a

fit of anger, Amit injured both the police officials to protect petitioner 'S' and Asha from further molestation. It is alleged that in order to destroy the entire evidence and to save police officials & to create a new story, on the very next day, police killed Amit in a fake encounter and registered FIR No.263 dated 01.07.2020.

12. It is contended that petitioner 'S' is behind bars since 2.07.2020. She has been wrongly declined bail on the ground that if released, she may again go back to the same environment and be exposed to moral and physical danger. It is urged that said findings are based on conjectures and surmises in the absence of any criminal background of the petitioner. The Courts below did not obtain any report to ascertain the character of the petitioner. Rather the Courts have commented on her character only because she went to meet Amit in the night along with her adult sister.

13. With all the above submissions, prayer is made for setting aside the impugned orders and to direct the release of the petitioner 'S' on bail.

Contentions for petitioner Neeraj:

14. On behalf of Petitioner Neeraj, it is contended that he is not named in the FIR; that he has been arrested simply on the basis of disclosure statement of co-accused Sandeep; that the only attribution to him is that he identified the knife used by Amit and demarcated the place of occurrence; that main accused Amit, who killed both the police officials with knife, has already been killed by the police in an encounter; that no evidence has been collected by the police as to whether knife taken into possession by the police in FIR No.263/2020 at the time of encounter of

Amit was used in the killing of police officials; that petitioner is in custody for the last more than 3 years and trial may take time to conclude and so, in all these circumstances, he be allowed bail.

State Response:

15. Ld. State counsel has opposed both the petitions. It is contended that both the petitioners were found present at the spot at the time of crime and that both of them participated in the crime along with co-accused. It has emphasized that murder of two police officials has been committed by the petitioners along with others and that as far as trial of petitioner Neeraj is concerned, out of 48 witnesses cited by the prosecution, 44 have already been examined and thus, trial qua him is at the fag end and so, both the petitions be dismissed.

16. I have considered submissions of both sides and have perused the record carefully.

Court Analysis:

Qua Petitioner 'S'

17. It is not in dispute that petitioner 'S' is a child in conflict with law and at the time of crime, her 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.

18. Apart from above parameters, the matter may also be considered on merits, as 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 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."

19. In present case, it is not in dispute that petitioner 'S' along with her cousin Asha had gone on the intervening night of 29/30.06.2020 to meet Amit. As per police investigation, petitioner and Amit were in the car

in the compromising position, when they were confronted by the two police officials Constable Ravinder and SPO Kaptan (since deceased) and as petitioner and her cousin knew the police officials, who could expose them in the village, so, on their asking Amit killed the two police officials. It is a matter of trial, as to whether the two deceased police officials were acting as moral police, in the absence of anything to show that any crime was being committed or there was any law-and-order problem.

20. On one hand, prosecution allegation is that Amit killed the two police officials with knife with the help of co-accused including the petitioners; on the other hand, there are allegations that the two police officials were demanding money from Amit, started molested the two girls and asked Amit to send the two girls to the police station for night and it is in order to avoid further molesting that in a fit of rage, he killed both of them. It is a matter of trial.

21. The allegations of the petitioner 'S' to the effect that she has been raped by the police officials and that her cousin Asha has been molested, is a subject matter of separate trial arising out of FIR No.65 dated 30.07.2020 registered at Police Station Women, Sonipat and since that alleged occurrence took place after the present occurrence of killing of two police officials, the same cannot be connected with present case, except to the extent that as per petitioner, she was taken to the police station by her mother, to tell that how two police officials were killed by Amit. Again, it is a matter of trial.

22. The declining of bail by the Courts below to the petitioner juvenile 'S' is not justified by observing that parents of the petitioner do not have control over her as she was out of home at odd hours. This in itself

cannot be a reason to conclude that her release was likely to expose her moral or physical danger. Without considering the role of the petitioner in crime, it was not at all proper to observe that because of the murder of two police officials, her release will defeat the ends of justice. No report whatsoever was obtained regarding the character or the criminal antecedents of the petitioner and so, the observation of Id. ASJ, Sonipat in the impugned order that release of petitioner will cause much harm to her, appears to be based on conjectures and surmises.

23. When the matter is considered on merits, it is noticed that case is admittedly dependent upon circumstantial evidence, mainly upon disclosure statements. Petitioner 'S' has been arrested on the basis of disclosure statement of co-accused Sandeep. It is not prosecution allegation that she used the knife or any other weapon to kill the two police officials. The only allegation, that too based on the disclosure statement, is thrashing by her and that she was present at the time of crime. Petitioner is in custody since 03.07.2020 i.e., for the last more than 3 years and 1 month. The trial may take time to conclude.

24. Having regard to all the aforesaid facts and circumstances of the case, but without anything further commenting on the merits of the case, Criminal Revision petition is accepted. Impugned orders are set aside. Petitioner 'S', who by now has attained majority, is directed to be released on regular bail on her furnishing bail bonds/surety bonds to the satisfaction of the Id. Trial Court/Duty Magistrate.

Qua Petitioner Neeraj:

25. As far as petitioner Neeraj is concerned, the prosecution case against him is based upon his own disclosure statement and that of the

co-accused Sandeep. The only attribution to him is about his presence at the spot and that he had identified the knife used by Amit (killed in police encounter) in the crime for killing the two police officials.

26. It is conceded case of the prosecution that the knife, as allegedly identified by the petitioner, was not used by him and rather, the same was used by Amit. Petitioner is in custody since 06.07.2020 i.e., for the last more than 3 years. No purpose shall be served by keeping him detained.

27. Having regard to above discussion, particularly the role attributed to him and all other facts and circumstances, but without commenting anything further on merits of the case, petitioner Neeraj is allowed bail. He is directed to be released him on regular bail to the satisfaction of the Id. Trial Court/Duty Magistrate.

28. Consequently, both the petitions are hereby allowed.

A photocopy of this order be placed on the file of other connected case.

16.08.2023
Vivek

(DEEPAK GUPTA)
JUDGE

1. Whether speaking/reasoned?

Yes/No
2. Whether reportable?

Yes/No