

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**Criminal Misc. No.M-44491 of 2022(O&M)
Date of Decision: March 03, 2023**

Mayank @ Monu

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

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Present: - Mr.Manu Sachdeva, Advocate for
Mr.Abhimanyu Singh, Advocate for the petitioner.

Mr.Ashok Singh Chaudhary, Addl.AG, Haryana.

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HARINDER SINGH SIDHU, J.

The petitioner (child in conflict with law) has filed this petition under Section 439 Cr.P.C for grant of regular bail in case FIR No.459 dated 14.09.2019 under Sections 302, 34 Indian Penal Code (*Section 25 Arms Act added later on*), Police Station Pataudi, District Gurugram.

The FIR was lodged on the complaint of one Sunil Kumar, who stated that Het Ram was his younger brother. Het Ram was working in Bata Company (Warehouse) at Jodi. On 14.09.2019, the complainant came to know that Het Ram had gone to Heli Mandi, where their distant relative, namely Rajesh had a dairy shop at Khandewla Mod. Two sons of Rajesh, namely; Aniket @ Golu and Mayank @ Monu (petitioner) were present there. Both of them started quarrelling with Het Ram. In this quarrel, Aniket and Mayank inflicted knife blows on Het Ram. He fell down. Blood was coming out of his body. They admitted the brother of the complainant

at CHC, Pataudi and went away. The complainant along with his father, his uncle Surjit and other persons from the village reached Khandewla Mod, where they found blood on the floor. CCTV camera was also installed at that place. He alleged that his brother had been murdered by Aniket and petitioner by causing knife injuries. Aniket and Mayank were harbouring a grudge against his brother Het Ram. Earlier also, they had scuffled with Het Ram. He requested that strict legal action be taken against them.

During investigation, petitioner - Mayank and his elder brother Aniket were arrested. It is alleged that on the disclosure statement of Aniket, blood stained knife and clothes were recovered. On the disclosure statement of the petitioner (Mayank), his blood stained clothes were recovered. As per the postmortem report, the cause of death was “*shock and hemorrhage following ante-mortem single sharp-edged weapon injury, external injury No.1 to 4 described earlier, singularly and cumulatively and its consequences were sufficient to cause death in the normal course of nature, blood has been preserved to rule out associated intoxication.*”

Mr. Manu Sachdeva, Ld. counsel for the petitioner has argued that the petitioner was apprehended on 15.09.2019. His date of birth is 28.01.2002 and on the date of the alleged incident i.e. 14.09.2019, he was about 17 years 04 months old. He has been directed to be tried as an adult in terms of Section 18(3) of the Juvenile Justice (Care and Protection of Children) Act, 2015 (“the Act”). His bail application is required to be adjudicated in terms of Section 12 of the Act. In this regard, he has referred to a decision of this Court in **CRR-1296 of 2020 Hardeep Singh @ Dipi Versus State of Punjab** decided on 29.04.2021. In that case two decisions of the Delhi High Court ***A.C. v. State of NCT of Delhi, Bail Application***

No.657 of 2019 rendered on 28.03.2019, and CCL 'A' v. State (NCT of Delhi), Bail Application No.2510 of 2020 decided on 19.10.2020 were relied upon as per which the bail application of a juvenile irrespective of his age is to be decided as per the provisions of Section 12 of the Act.

The relevant observations from **A.C. v. State of NCT of Delhi** are as under:

"11. But the Additional Public Prosecutor fairly conceded that there is no provision in JJ Act, 2015 requiring a departure to be made from the general provision contained in Section 12 quoted above in the matter of release on bail of a CCL who has been referred to be tried as an adult. To put it simply, the above referred provision of Section 12 governs the field for all children in conflict with law, irrespective of the age bracket to which they belong, and notwithstanding the fact as to whether the case against them is being inquired into by the JJB or the Children's Court to which it may have been referred under Section 19(3).

12. The impugned order of the Children's Court, in above view, fails to pass the muster of Section 12 and, cannot be upheld. The relevant observations of the Children's court in denying release on bail to the petitioner have been extracted above in extenso. Having regard to the provision contained in the main clause of sub-Section (1) of Section 12, bail is the general rule. The circumstances in which denial, by way of an exception, is to be adopted, are indicated in the proviso to the said sub-section. Pertinent to note here that the circumstances in which such person (CCL) is not to be released on bail include the existence of reasonable ground for believing that :

(i) the release is likely to bring the CCL into association with any known criminal;

(ii) it would defeat the ends of justice."

In *CCL 'A' v. State (NCT of Delhi), Bail Application No. 2510 of 2020 decided on 19.10.2020*, Delhi High Court had observed inter alia :

"(i) xx xx xx xx

(ii) *Section 439 Cr.P.C., 1973 has no application to the issue of grant or denial of bail to a juvenile since, again, a juvenile is to be dealt with by a special statute, namely the JJ Act, which contains a specific provision for bail, namely section 12 of the JJ Act;*

(iii) *If a juvenile has been denied bail by the JJB and/or the Children's Court, it is available for the juvenile to file an application before the High Court under section 12 of the JJ Act seeking bail; and it is not necessary that the bail plea be styled as an appeal under section 101(2) of the JJ Act. The words ".....or otherwise" appearing in 8(2) are wide enough to include any bail proceeding filed before the High Court, whether directly or after having been denied relief by the JJB and/or the Children's Court; and the High Court is empowered to entertain a bail plea as a proceeding of first instance, without having to treat it as an appellate or revisional proceeding;*

(iv) *A bail plea filed on behalf of a juvenile must always and only be considered on the criteria and parameters set-out in Section 12 of the JJ Act, and the general principles for grant or denial of bail under section 437 or section 439 Cr.P.C., 1973 have no application in such a case."*

Ld. counsel has contended that the Children Court has dismissed the bail application of the petitioner only taking into account the seriousness and gravity of the offence alleged to have been committed. The case has not been considered as per Section 12 of the Act.

He further argued that only blood stained clothes have been alleged to be recovered from the petitioner. The knife blows have been attributed to co-accused Aniket @ Golu. The knife is also stated to have been recovered from Aniket. The petitioner has been shown to be empty handed.

He has referred to the deposition of the complainant-Sunil who has been examined as PW4. The pen drives of the CCTV cameras which had captured the incident were played in Court. PW4 identified the person who was seen causing injuries to the deceased as Aniket. He identified the petitioner as the person accompanying Aniket, who was empty handed.

He further argued that the petitioner has been in custody for about 3½ years. The trial has not made much progress. Out of 26 prosecution witnesses cited, only 13 have been examined so far. He urged that the petitioner be released on bail considering his custody, the role attributed to him and the fact that he was a juvenile at the time of alleged commission of crime.

Ld. Counsel for the State on the other hand argued that the petitioner is involved in a heinous crime and there is no justification for his release on bail at this stage when the 13 out of the 26 prosecution witnesses have already been examined.

Having heard Ld. Counsel, I am of the view that the petitioner deserves to be released on bail.

The petitioner, admittedly, is a juvenile in conflict with law. Relying on decisions of the Delhi High Court it has been held in ***Hardeep Singh @ Dipi (Supra)*** that the bail of a juvenile, even if he is directed to be tried as an adult in terms of Section 18(3) of the Act is to be decided as per

Section 12 of the Act as per which the juvenile (child in conflict with law) will be denied bail only if his release is likely to bring the CCL into association with any known criminal or would defeat the ends of justice.

In the present case, there is no material to justify the denial of bail to the petitioner on the aforementioned grounds.

Even otherwise, considering the period of his custody and the stage of trial it is appropriate to direct the release of the petitioner on bail.

Thus, without expressing any opinion on the merits of the case, this petition is allowed. The petitioner is directed to be released on bail subject to his father/ guardian furnishing bail /surety bonds to the satisfaction of the Trial Court/Duty Magistrate.

A Probationary Officer shall be appointed for the child in conflict with law, who shall maintain general oversight and supervision over the present applicant as may be deemed necessary, to ensure that he does not fall into any undesirable company and is not exposed to any moral, physical or psychological danger till the conclusion of trial.

March 03, 2023

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(HARINDER SINGH SIDHU)
JUDGE

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No