

Neutral Citation No. 2023:PHHC:159199

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Reserved on: December 07, 2023
Date of Decision: December 12, 2023

CRA-S-2763-2023

'B' (*identity concealed*)

...Appellant

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present: - Mr. Balwinder Sangwan, Advocate for the appellant.
Mr. Sumit Jain, Addl. A.G., Haryana.

DEEPAK GUPTA, J.

This appeal filed under Section 101(5) of the Juvenile Justice (Care and Protection of Children) Act, 2015 {hereinafter referred as 'the Act'} is directed against the order dated 16.08.2023 passed by the Court of learned Addl. Sessions Judge, Faridabad, dismissing an application to release the petitioner on bail in case FIR No.202 dated 21.07.2021, under Sections 323, 379-B, 34 of IPC (Section 302 IPC added later on), registered at Police Station NIT, Faridabad.

2. (i) As per prosecution version, on 20.07.2021 a police party of Police Post Sector 21-D, Faridabad received telephonic information regarding admission of an unknown person in B.K. Hospital, Faridabad in injured condition. Police reached there. The injured was found to have been referred to AIIMS Trauma Centre. On coming to know about the whereabouts of the injured, the Investigating Officer of the case reached

Safdarjung Hospital, Delhi, where injured was declared to be unfit for making statement. However, Geeta, the mother of injured Deepak made statement to the effect that on that date at about 9.30 p.m., two persons came to her informing that two boys were inflicting danda blows to her son Deepak and were trying to snatch money. She further told that her son is a hawker and sells vegetables and that the snatcher boys had snatched the money from her son after inflicting injuries to him.

(ii) FIR was registered. Statements of the witnesses were recorded. CCTV footage of the place of occurrence was collected from the nearby camera. During treatment, injured Deepak succumbed to the injuries on 22.07.2021, at which Section 302 IPC was added. Postmortem examination of the deceased revealed as many as 10 injuries on his person, which were found to be ante mortem in nature. Cause of death was opined to be cranio-cerebral damage as a result of blunt force impact on head. In her supplementary statement, complainant disclosed the names of culprits as 'B' (appellant -juvenile) and Akash @ Bhondia S/o Suresh, residents of village Ankhir, Faridabad.

(iii) Appellant B was arrested on 25.07.2021 and pursuant to the disclosure statement suffered by him, danda used in the commission of crime was recovered from him. Co-accused Akash @ Bhondia was arrested from whom certain money was recovered. Vide order dated 20.09.2021, appellant B was declared juvenile by the Court as he was found to be 17 years, 03 months and 22 days on the date of commission of crime and so, case of the appellant was referred to the Juvenile Justice Board, Faridabad. After completion of the investigation, challan against co-accused Akash already stands presented, which was committed to the Court of Sessions. The final report qua appellant B was filed before the

Juvenile Justice Board. The matter was later on sent to the Children Court.

(iv) After framing of the charge against appellant B on 06.12.2021 under Sections 323, 379-B and 302 read with Section 34 IPC, 04 witnesses already stand examined out of 21 witnesses cited by the prosecution. Appellant B applied for bail under Section 439 Cr.P.C. before the Court concerned in July, 2022, but the same was dismissed on 12.07.2022. He filed second similar petition in August, 2023, which also stands dismissed vide impugned order dated 16.08.2023 (Annexure P-6).

3. Assailing the aforesaid order, it is contended by learned counsel for the appellant that the case set up by the prosecution stands demolished by the evidence led during trial, inasmuch as complainant of the case, namely, Geeta failed to establish the identity of the appellant and was declared hostile. Learned counsel further contends that even if the case of the appellant is being tried before the Children Court, by treating him as an adult, still his case is required to be examined in the light of the parameters laid down under Section 12 of the Act, but the Court of learned Addl. Sessions Judge, Faridabad has not even considered the entitlement of the appellant for grant of bail in terms of Section 12 of the Act. Learned counsel also contends that in this case, the Court did not even seek social investigation report and passed the impugned order with no application of mind. Further contention of learned counsel is that gravity of the offence cannot be a ground to reject the bail. Besides, appellant is in custody for the last more than 02 years and so, the benefit of Section 12 of the Act should be extended to the appellant. Learned counsel has also referred to *“Sachin @ Suraj v. State of Haryana”*, CRA-S-149-2023, decided by a co-ordinate Bench of this Court on 12.07.2023.

With these submissions, prayer is made for setting aside the impugned order and to order releasing the appellant on bail.

4. Opposing the appeal, though learned State counsel does not dispute the fact that the appellant is a juvenile and that his case is being tried before the Children Court, but it is contended that long period of incarnation in jail, cannot itself be termed as illegal and that detention in jail as undertrial would not violate Article 21 of the Constitution of India as it is permissible under Code of Criminal Procedure as held by the Hon'ble Supreme Court in *"Parmod Kumar Saxena v. U.O.I. and Ors."*, *2008(63) ACC 115 (SC)*. Learned State counsel further submits that the appellant was having contacts with unknown criminals, as he is also a drunkard. He committed offence in a pre-planned manner, though he was below the age of 18 years at the commission of crime. Learned State counsel also submits that in case, the appellant is released on bail, he may come in contact with the unknown criminals and will get exposed to the moral, physical or psychological danger and so keeping in view the gravity of the offence and all these factors, the appeal deserves to be dismissed.

5. I have considered submissions of both the sides and have appraised the record.

6. It is not in dispute that appellant B is a child in conflict with law, as at the time of crime, his age was above 17 years, though below 18 years. There can also be no doubt that offence of murder along with snatching is a heinous crime. Appellant is admittedly being tried an adult before the Children Court.

7. Relevant portion of Section 12 of the Act reads as under: -

"12. Bail to a person who is apparently a child alleged to be in conflict with law-

(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 (2 of 1974) 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."

8. The aforesaid provision of the Act contains a mandate to release a child in conflict with law on bail, when he is apprehended 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 if a juvenile is to be tried as adult, still his bail is to be considered under the parameters provided under Section 12 of the Act.

9. In *Sachin @ Suraj's* case (supra), a co-ordinate bench of this Court, after referring to Section 12 of the Act, has held as under: -

"In the scheme of enactment, it can be seen that Section 12 contains an imperative mandate to release a child on bail, when he is apprehended or detained in connection with an offence and it is a special provision, which stand to the exclusion of the Code of Criminal Procedure, Section 5 of the Cr.PC contained a saving clause, which reads thus: -

"5. Saving: - Nothing contained in this Code shall, in the absence of specific provision to the contrary, affect any special or local law for the time being in force, or any special

jurisdiction or power conferred or any special form or procedure prescribed, by any other law for the time being in force.”

The parameters for considering an application for bail filed by a juvenile under Section 12 of the Act of 2015 are clearly distinguishable from the application filed under Section 439 of Cr. PC and after following the procedure as prescribed under the Act i.e., from Sections 15 to 18 when a decision is taken to try a juvenile as an adult, the issue that arises for consideration is upon, such a contingency, whether the benefit of Section 12 can be denied to him.

Even when a child is sent up for trial as an adult before a Children’s Court, the child does not become an adult or ‘major’, but is only to be treated differently considering the heinous nature of the offence alleged and consequent need for a stricter treatment of the offender, though still as a juvenile in conflict with law. It must be borne in mind that the Legislature has created this categorization based upon an assessment of the child’s mental and physical capacity to commit such offence, ability to understand the offence. If the intention of the Legislature was that upon such assessment, the child would de-jure become an adult, then the question of there being a separate Children’s Court to try him with specific safeguards provided for the trial would not arise. That however is not the case.

8. *In fact, the “Act” is a beneficial piece of legislation and it must be construed by taking into consideration the object behind its enactment, being to provide for the care, protection, treatment, development and rehabilitation of neglected or delinquent juveniles. It is a beneficial legislation aimed at making available the benefit of the Act to the neglected or delinquent juveniles. While construing the provisions contained in Section 12 of the “Act”, which contemplates that a juvenile shall be released on bail notwithstanding anything contained in Cr.PC and Section 12 further provides that he may be released with or without sureties, or may even place under the supervision of Probation Officer or under the care of any fit person. The only embargo not releasing such a person on bail is the proviso, which prescribes that if there appears reasonable grounds for believing that the release is likely to bring that person into the association*

with any known-criminal or expose the said person to moral, physical or psychological danger or the person/persons release would defeat the ends of justice.”

10. Applying the above legal position to the present case, the perusal of the impugned order dated 16.08.2023 (Annexure P-6) would reveal that though at one place, the Court of learned Addl. Sessions Judge, Faridabad referred to Section 12 of the Act, but considered the bail plea only under the parameters of Section 439 Cr.P.C., without even referring to the parameters laid down under Section 12 of the Act. The impugned order does not reveal that even the social investigation report qua the appellant was called for.

11. Apart from above, it is not disputed that the appellant is in custody since 25.07.2021, i.e., for the last more than 02 years and 04 months. Out of 21 witnesses cited by the prosecution, only 04 have been examined so far. The status report filed by the respondent-State does not reveal any criminal antecedents of the appellant. The contention of respondent-State to the effect that appellant being a drunkard, may come in contact with unknown criminals and will get exposed to the moral, physical or psychological danger, appears to be based on conjectures and surmises, in the absence of any material in this regard to support the contention. The trial may take time to conclude. Long incarceration of the appellant, despite being child in conflict with law, though being tried as an adult, violates his fundamental right to speedy trial, which is now the facet of Article 21 of Constitution of India ensuring fundamental right to life and liberty.

12. Having regard to all the aforesaid facts and circumstance, but without commenting anything further on the merits of the case, the appeal

is accepted. The impugned order is set aside. The appellant is directed to be released on bail on his furnishing bail bonds and surety bonds to the satisfaction of learned Trial Court concerned.

December 12, 2023

sarita

Whether reasoned/speaking:
Whether reportable:

(DEEPAK GUPTA)

JUDGE

Yes/No
Yes/No