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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-55100-2023 (O & M)
Date of decision: 18.12.2023

Sourav

.... Petitioner

V/s

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Hemant Bassi, Advocate,
for the petitioner.

Mr. Kanwar Sanjiv Kumar, AAG, Haryana.

JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition under Section 439 Cr.P.C. read with Section 101(5) Juvenile Justice (Care and Protection of Children) Act, 2015 is for the grant of regular bail to the petitioner in case FIR No.316 dated 13.07.2022 under Sections 302, 34 IPC (Sections 109, 120-B IPC added later on) registered at Police Station Bilaspur, District Gurugram.

2. The present FIR came to be registered at the instance of Krishan who stated that he had a younger brother Bhagwan who had died 6/7 years ago leaving behind a son and a daughter. The elder son Sumit @ Koki (deceased) was aged about 17½ years old and a student. A day prior on 12.07.2022, at about 3.30 p.m. when he (complainant) came home, he had found that Sumit was not there. On an enquiry, he came to know that Sumit had left home at about 12.30 p.m., by saying that he was going out with his friend Saurabh @ Sourav (petitioner). When he (complainant) tried to call Sumit on his phone, it was found to be switched off. On calling Saurabh, no satisfactory reply was given by him. Then at night, he alongwith

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his cousin brother-Dharambir and friend-Ajay went to Saurabh's house at village Mokalwas. Saurabh misled them and stated that he had left Sumit at the Bus Stand of Mokalwas that evening itself. Despite searching, Sumit could not be found. Thereafter, on 13.07.2022, in the afternoon when he alongwith his family members reached Bus Stand, Mokalwas looking for Sumit, he was informed that on 12.07.2022, Saurabh was seen going on a motorcycle towards village Kaasan alongwith Sumit. On a search being conducted, the dead body of Sumit was discovered near a dilapidated house close to the KMP highway. On an enquiry, they (complainant party) found that Saurabh in connivance with some of his friends had murdered his (complainant's) nephew Sumit.

Saurabh alongwith his companions Pawan (since granted bail vide order dated 21.03.2023 passed in CRM-M-7274-2023, Annexure P-6) and Sahil (since granted bail vide order dated 20.10.2023, passed in CRM-M-35965-2023, Annexure P-7) were joined in the investigation. Saurabh disclosed his date of birth as 11.04.2005 and Sahil as 17.12.2004. On verification, Saurabh was found to be 17 years 02 months and 08 days at the time of occurrence whereas Sahil was found to be aged 17 years 06 months and 26 days. Thus, both the accused were found to be juvenile and were, therefore, taken into protective custody. Section 120-B IPC was added in the case.

Saurabh got recovered his mobile phone, clothes worn by him at the time of occurrence alongwith a motorcycle bearing No.HR-26-AY-6088. Sahil and Saurabh were both produced before the Juvenile Justice Board and were sent to the Child Observation Home, Faridabad.

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Accused-Pawan was arrested on 14.07.2022 and Section 109 IPC was added. He got recovered a mobile phone which was used in the conspiracy.

The call details of mobile phone No. 8826309319 of juvenile Saurabh, call details of mobile phone No.8448112021 of Pawan and call details of mobile No.7056336671 of deceased-Sumit were obtained and analyzed and it was found tha Pawan and Saurabh had been in communication between 11.07.2022 to 13.07.2022.

The Challan against the juvenile Saurabh and Sahil was presented in the Court of the Principal Magistrate (Juvenile Justice Board), Gurugram on 16.10.2022. However, they were later directed by the Board to be tried as adults and the matter was sent to the Children Court, Gurugram where charges were framed against them under Sections 302, 109, 120-B IPC.

3. The learned counsel for the petitioner contends that the petitioner had been falsely implicated in the present case. It was a case of blind murder. The Children's Court had rightly observed that the merits of the case and evidentiary value of the circumstantial evidence allegedly collected by the investigating agency were not relevant to be taken into consideration at this stage, for the purposes of adjudication of a bail application under Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015. However, the bail application had been declined on the grounds not germane to the considerations as per Section 12. In fact, if every case against a juvenile under Section 302 IPC was to be considered as one which shocked the collective conscience of the society thereby denying him the concession of bail on account of the prospects of retribution or wrath of a

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community or a society, then, bail could never be granted to such a juvenile. In fact, no finding in view of Section 12 of the Act has been recorded while declining bail to the petitioner. As the petitioner was in custody 14.07.2022 and none of the 37 prosecution witnesses had been examined so far, the Trial of the present case was not likely to be concluded anytime soon, and therefore, the petitioner was entitled to the concession of bail, moreso, when, his co-accused had been granted the similar concession.

4. The learned counsel for the State has filed a reply dated 11.12.2023. The same is taken on record. While referring to the said reply, he contends that the petitioner was the main accused. The Trial Court had examined the matter in its proper perspective and had come to the conclusion that in view of the nature of the offence, it would be safer for the petitioner to remain in protected custody because he was likely to face retribution, in case, he was granted the concession of bail. Therefore, the present petitioner was liable to be dismissed. He, however, concedes that the petitioner was in custody since 14.07.2022 and none of the 37 prosecution witnesses had been examined so far and that two co-accused of the petitioner had been granted the concession of bail.

5. I have heard the learned counsel for the parties.

6. The evidence against the petitioner will certainly be examined during the course of the Trial. He is a juvenile in conflict with law. Except the personal opinion expressed by the Children's Court, there is nothing to suggest that the petitioner would face wrath and outrage from the members of the society in case he is granted the concession of bail. Further, as he is in custody since 14.07.2022 and none of the 37 prosecution witnesses had been examined so far, therefore, the Trial of the present case is not likely to be

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concluded anytime soon. In this situation, the further incarceration of the petitioner is not required, moreso, when his two co-accused, namely, Pawan and Sahil have already been granted the concession of bail.

7. Thus, without commenting upon the merits of the case, the present petition is allowed and the petitioner, namely, Sourav is ordered to be released on bail to the satisfaction of the Trial Court/Duty Magistrate concerned.

8. The petitioner shall appear on the first Monday of every month before the police station concerned till the conclusion of the trial and furnish an affidavit each time that he is not involved in any case other than the case(s) referred to hereinabove.

9. If any attempt whatsoever is made by the petitioner and/or his family members/friends to contact/threaten/intimidate any of the witnesses of the present occurrence, the State/complainant shall be at liberty to move an application for cancellation of bail granted vide this order.

10. In addition, the petitioner (or someone else on his behalf) shall prepare an FDR in the sum of Rs.1,00,000/- and deposit the same with the Trial Court. The same would be liable to be forfeited as per law in case of the absence of the petitioner from Trial without sufficient cause.

(JASJIT SINGH BEDI)
JUDGE

December 18, 2023
sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No