

214

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

CRR-2901-2022 (O&M)
Date of decision : 24.01.2023

Sahib

...Petitioner

Versus

Union Territory, Chandigarh

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Azad Khan, Advocate for the petitioner.

Mr. Akashdeep Singh, Addl. PP UT Chandigarh.

VIKAS BAHL, J. (ORAL)

Status report has been filed by learned Addl. PP UT Chandigarh today in the Court and is taken on record.

Challenge in the present Criminal Revision is to the order dated 01.09.2022, vide which, an application filed under Section 12 of the Juvenile Justice (Care and Protection of Children), Act, 2015 (hereinafter to be referred to as “the Act of 2015”) for grant of bail in FIR No.21 dated 17.08.2022 registered under Sections 419, 420, 384 and 120-B of Indian Penal Code, 1860 (Sections 467, 468, 471 of IPC have been added later on) at Police Station Cyber Crime, District Chandigarh, has been dismissed.

Challenge has also been made to the order dated 17.09.2022, vide which, the appeal filed against the abovesaid order dated 01.09.2022 has also been dismissed.

Learned counsel for the petitioner has submitted that the

petitioner has been falsely implicated in the abovesaid case and he is in custody since 22.08.2022 and investigation is complete and challan has been presented and there are 20 prosecution witnesses, out of which, none have been examined as yet and thus, the conclusion of trial is likely to take time and that the petitioner is not involved in any other case. It is further submitted that as per Social Investigation Report (Annexure R-1) filed alongwith reply filed by the UT, it has been stated that the relationship of the petitioner between him and his father and mother is cordial and the living conditions of the family are good and that the petitioner is cooperative, friendly with his classmates and his behaviour is good towards the teachers and also states that the petitioner has good intelligence. It is further submitted that the petitioner is in 12th class. It is contended that even as per the impugned order, it has been mentioned that the Board believes that “at least for some time he needs to be kept under observation home” and the said order was passed on 01.09.2022 and a period of more than four months has already elapsed since the same. It is further contended that the case of the petitioner is on a similar footing as that of co-accused Altaf, who has already been granted the concession of regular bail by this Court vide order dated 07.12.2022 passed in CRR-2442-2022.

Learned State counsel, on the other hand, has opposed the present Criminal Revision and has submitted that in the present case, a serious crime has been committed inasmuch as, a racket of sextortion is being run by a gang of people, as 197 similar complaints have been received all over the country and the police is carrying on with the investigation with due diligence. It is further submitted that the petitioner was earlier a

juvenile but has now become a major.

This Court has heard learned counsel for the parties and has perused the paper book.

Before adverting to the facts of the present case, it would be relevant to take note of Section 12 of the Act of 2015 and the same is reproduced hereinbelow:-

‘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.”*

A perusal of the above reproduced Section 12 of the Act would show that bail is the rule and not jail in case of a juvenile and the same is to be refused only in case the Court comes to the conclusion on the basis of material before it, that the case is covered under the three exceptions

mentioned in Section 12 of the Act.

A Co-ordinate Bench of this Court in CRR-1019-2020 passed in “**Gurkirat @ Gora Versus State of Haryana**” has held as under:-

“Prayer in this revision petition is for setting-aside the order dated 31.05.2020 passed by the learned Magistrate as well as the order dated 01.07.2020 passed by the Appellate Court vide which the regular bail application of the petitioner in FIR No.99 dated 14.03.2020 registered under Sections 302, 323, 341 read with Section 34 and 506 of the Indian Penal Code, 1860 (in short 'IPC') at Police Station Taraori, District Karnal was dismissed.

Brief facts of the case are that the FIR was registered on a complaint given by Lakhwinder Singh that he is doing labour work and is having two children. His son Aspi @ Happy was also doing the labour work with the complainant. About 01 year ago, Kulwinder Singh, father of the petitioner has levelled allegations on the son of the complainant that he had teased his niece and thereafter, a Panchayat was convened and the matter was compromised but the accused were having a grudge against his son namely Aspi @ Happy. On 13.03.2020 at about 07:00 PM, his son Aspi @ Happy along with his mother Harvinder Kaur and nephew of the complainant namely Gurpreet Singh have gone to take the medicine for Harvinder Kaur on a motorcycle bearing registration No.HR-05-BC-8967 and when they reached at Sambhi turn, then Kulwinder Singh, Gurkirat @ Gora (present petitioner) along with two other persons namely Karnail Singh and Balkar Singh waylaid them and thereafter, Balkar Singh, who was having a Binda in his hand, gave blow of same on the chest of the son of complainant. Then, Kulwinder Singh gave another Binda blow on the back of the son of the complainant, Karnail Singh gave Binda blow on the chest of the son of the complainant and the

petitioner – Gurkirat @ Gora gave an iron pipe blow on the chest and back of the son of the complainant. Thereafter, all the assailants ran away from the spot and the injured was taken to hospital where he was medico legally examined and later on, he had died on 14.03.2020.

xxx xxx xxx

Learned senior counsel for the petitioner has submitted that as per the provisions of Section 12 of the Act of 2000, the intention of the legislature is to grant bail to the juvenile irrespective of the nature or gravity of the offence, alleged to have been committed by him and the same can be declined only in case where reasonable grounds are there for believing that the release of juvenile is likely to bring him into the association of any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice.

xxx xxx xxx

Reply by way of affidavit of the Investigating Officer is on record and as per the reply, it is stated that upon verification, it was found that the petitioner as well as his father have caused injuries to the victim whereas the two persons namely Karnail Singh and Balkar Singh, named in the FIR were found innocent.

Counsel for the State has placed on record the opinion regarding cause of death of the deceased, which is reproduced as under:

“The opinion regarding the cause of death has already been given in this case on 20.10.2020 that “the cause of death in this case are injuries and its complications”. In our opinion, it was a case of poly-trauma having Severe Acute Respiratory Distress Syndrome and Shock with Glasgow Coma Scale E1M1V1 as reported in the hospital record and the findings noticed during autopsy and

histopathological examination of viscera of deceased corroborated with the hospital record. In our opinion, the complications due to injuries were Acute Respiratory Distress Syndrome followed by Cardiac Arrest.”

xxx xxx xxx

Counsel for the complainant, on the other hand, has argued that as per the FIR, there is an enmity between the family of the complainant and father of the petitioner Kulwinder Singh on account of teasing the daughter of Kulwinder Singh i.e. the sister of the present petitioner – Gurkirat @ Gora by the deceased Aspi@ Happy about 01 year ago, prior to the incident and the matter was compromised in the Panchayat. It is further submitted that since the petitioner is above 17 years of age, he should be treated as an “Adult” and therefore, his bail application be declined.

xxx xxx xxx

Accordingly, the present revision petition is allowed, the dated 31.05.2020 passed by the learned Magistrate as well as the order dated 01.07.2020 passed by the Appellate Court, are set-aside and the petitioner is directed to be released on bail subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate/Illaq Magistrate.”

A perusal of the above-said case would show that even where the allegation against the petitioner therein (Gurkirat @ Gora) was that he gave an iron pipe blow on the chest and back of the son of the complainant, the petitioner therein was released on bail.

A Coordinate Bench of this Court was pleased to grant bail in case titled as ***Vishnu Vs. State of Punjab***, reported as ***2021(3) RCR (Criminal) 239***, wherein the allegation was that the petitioner therein had

inflicted the injury on the head of the deceased and a bloodstained wooden stick was recovered from the petitioner therein. Relevant portion of the said judgment is reproduced hereinbelow:-

“Petitioner, who is a child in conflict with law, has filed the instant petition through his father, challenging the orders dated 15.01.2021, Annexure P-2, whereby application for grant of bail under Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short “the Act”) has been declined by the Principal Magistrate, Juvenile Justice Board, Rohtak and order dated 02.02.2021 passed by learned Additional Sessions Judge, Rohtak whereby appeal filed against the said order has been dismissed.

Facts, in brief, are that on the basis of a complaint by Rajender, FIR No.214 dated 28.05.2020 was registered under Section 201, 302, 34 of the Indian Penal Code and Section 3 (2) (vi) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short “SC & ST Act”) on the allegation that Amit alias Neetu and the present petitioner have murdered his son Sombir. During investigation, the petitioner and the co-accused were apprehended on 28.05.2020 and they admitted their involvement in the homicide in their disclosure statement.

xxx xxx xxx

Opposing the petition, State counsel, who is assisted by the counsel for the complainant, upon instructions from SI Bhagat Singh submits that the petitioner inflicted the injury on the head of the deceased and a blood stained wooden stick as well as a motorcycle used in the crime have been recovered from the petitioner. As per his instructions, challan has been presented on 23.07.2020, charge has been framed on 10.03.2021 and the trial is fixed for 03.06.2021 for recording of statement of prosecution witnesses though none of the

witnesses has appeared in the witness box so far. He submits that if the petitioner, is released on bail, there is a likelihood of his coming in contact with criminals. According to the respondents, an application for re-determining the age of the petitioners is pending before the Trial Court.

xxx xxx xxx

Grant of bail to a child in conflict with law is a rule and rejection of the same is an exception. Section 12 of the Act provides that notwithstanding anything contained in the Code of Criminal Procedure or in any other law for the time being in force, except for the three contingencies, specified in proviso to Section 12 (1) of the Act, the grant of bail to a child in conflict with law cannot be declined. The Courts have even gone to the extent of holding that neither the gravity of the offence nor the fact that the co-accused are yet to be apprehended is a ground to reject the prayer. The Courts below have failed to appreciate the legal position of law which has been followed by this Court in CRR-862-2020, titled as Vishal vs. State of Haryana decided on 27.05.2020 and CRR-962-2020 titled as Sanjiv vs. State of Haryana decided on 02.07.2020.

During the course of arguments, the respondents could neither show nor refer to any material to explain as to how, in case the petitioner is enlarged on bail, would he be exposed to moral, physical or psychological danger or would come in contact of known criminals. Mere apprehension of the prosecution without there being any material on record would not be sufficient to decline the prayer for grant of bail. It may also be noticed that in case a juvenile is found guilty and convicted, the maximum period that he can be ordered to spend in a Special Home under Section 18 (1) (f) of the Act is three years. The petitioner has spent more than one year in incarceration, therefore, no purpose would be served in

detaining the petitioner any further.

As a sequel to the above discussion, the revision petition is accepted, the impugned order dated 15.01.2021 passed by the Principal Magistrate, Juvenile Justice Board, Rohtak as well as order dated 02.02.2021 passed by the Additional Sessions Judge, Rohtak are hereby set aside.

Without adverting to the merits of the case at this stage, the petitioner is ordered to be released on bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Chief Judicial Magistrate/Judicial Magistrate concerned.”

A Coordinate Bench of this Court in case titled as “**Sanjit vs. State of Haryana**”, in CRR-962-2020 decided on 02.07.2020 has observed as under:-

“A bare reading of the provision reproduced herein would make it apparent that an exception has been carved out for declining the bail to the juvenile who is in conflict with law i.e. he or she is likely to come in association with any known criminal or upon release on bail would expose such juvenile to moral, physical or psychological danger or that release of the juvenile would defeat the ends of justice. For invoking such exception, there has to be some material before the competent authority on the basis of which it can be held that the release of the juvenile in the present case would fall within the exception recognized under Section 12 of the Act. The impugned order dated 13.5.2020 passed by the Appellate Court at Annexure P-1 is completely bereft of any such reasoning. No such material/evidence has been adverted to in the order. Seriousness of the offence as mentioned in the FIR would not be a ground to deny to the juvenile the concession of bail in the light of Section 12 of the Act.”

Perusal of the above-said judgment would show that in an application under Section 12 of the Act, bail is the rule and only in case the appellant is covered under any one of the exceptions, as mentioned in Section 12 of the Act, bail application could be rejected.

In the present case, a perusal of the Social Investigation Report (Annexure R-1) filed alongwith reply filed by the UT, it is clear that the relationship of the petitioner with his father and mother is cordial and the living conditions of the family are good and that the petitioner is cooperative, friendly with his classmates and his behaviour is good towards his teachers and is also stated to have good intelligence and even a perusal of the impugned order would show that it has been recorded in the report that the petitioner should be kept under observation home at least for some time and the said order was passed on 01.09.2022 and a period of more than four months has elapsed since then. Co-accused of the petitioner namely, Altaf has also been granted the benefit of regular bail by this Court vide order dated 07.12.2022 passed in CRR-2442-2022 and that the case of the petitioner is almost on a similar footing as that of the said co-accused. The petitioner has been in custody since 22.08.2022 and the investigation is complete and the challan has been presented and out of 20 prosecution witnesses, none have been examined as yet and thus, the conclusion of trial is likely to take time and the petitioner is not involved in any other case.

Keeping in view the above-said facts and circumstances, the present Criminal Revision is allowed and impugned orders dated 01.09.2022 and 17.09.2022 are set aside and the petitioner is ordered to be released on bail subject to his furnishing bail/surety bonds to the satisfaction

of the concerned trial Court/Duty Magistrate/Illaq Magistrate and subject to him not being required in any other case.

The petitioner is also directed to get his presence marked at the local Police Station on every Monday at 11:00 am.

In case of violation of abovesaid condition, it would be open to UT, Chandigarh to move an application for cancellation of bail.

However, nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial Court would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present revision petition.

All the pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid judgment.

24.01.2023

Pawan

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:- **Yes/No**

Whether reportable:- **Yes/No**