



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-1022-2024
Date of Decision: 20.05.2024

HARMIT SINGH

...Petitioner

Versus

STATE OF PUNJAB AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Inderjit Sharma, Advocate, for the petitioner.

Mr. V.K. Malhotra, AAG, Punjab.

DEEPAK GUPTA, J.

Petitioner is aggrieved by the order dated 20.02.2024 passed by
ld. Sessions Judge, Gurdaspur, whereby matter has been referred to Juvenile
Justice Board, Gurdaspur, for proceeding further in accordance with law.

2.1 Ld. counsel contends that on the complaint of Narinderjit Kaur
(now deceased), FIR No.85 dated 25.06.2020 was registered at Police Station
Tibber, District Gurdaspur, under Section 307 IPC against respondent N: 2.
During treatment, injured Narinderjit Kaur expired and so, Section 302 IPC
was added. Police conducted the investigation and filed cancellation report.
However, the Magistrate did not accept the cancellation report and vide order
dated 08.02.2023, held that *prima facie* case under Section 302 IPC was made
out against the accused-respondent No.2-Komalpreet Kaur.

2.2 Ld. counsel contends further that before the Court of Sessions,
respondent No.2 moved an application to declare her as juvenile, contending
that her date of birth being 04.06.2003, she was 17 years and 19 days old at

the time of alleged commission of offence. She had placed reliance upon the school certificate. Ld. Sessions Judge, Gurdaspur accepted this contention after seeking reply of the respondent-State and held respondent No.2 to be Juvenile and sent the record of the case to Justice Justice Board, Gurdaspur for further proceeding in accordance with law.

2.3. Ld. counsel contends that even if respondent No.2 was juvenile, but she being above 16 years of age and having committed a heinous crime under Section 302 IPC, the Juvenile Justice Board was required to be directed to make preliminary assessment as per Section 15 of the Juvenile Justice (Care & Protection of Children) Act, 2015 [for short 'the Act'] and after making the assessment, if it is found that there is need for trial of the said child as an adult, then the Juvenile Justice Board is required to transfer the trial of the case to the Children Court as per Section 18 (3) of the Act, having jurisdiction to try such offences.

2.4. Ld. counsel contends that in view of the impugned order dated 20.02.2024, the Juvenile Justice Board is proceeding further with the matter, without making any assessment as required under Section 15 of the Act.

3. Notice of motion.

4. Mr. V. K. Malhotra, DAG, Punjab accepts notice on behalf of the respondent-State.

5. Ld. State counsel concedes the legal position that once a child in conflict with the law is found to be above 16 years of age and is alleged to have committed a heinous crime, then preliminary assessment is required to be made by the Juvenile Justice Board in accordance with Section 15 of the Act and then necessary order is to passed as per Section 18(3) of the Act.

6. Section 15 and relevant part of Section 18 of the Act, read as under:

“Section 15. Preliminary assessment into heinous offences by Board.

(1) In case of a heinous offence alleged to have been committed by a child, who has completed or is above the age of sixteen years, the Board shall conduct a preliminary assessment with regard to his mental and physical capacity to commit such offence, ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence, and may pass an order in accordance with the provisions of sub-section (3) of section 18:

Provided that for such an assessment, the Board may take the assistance of experienced psychologists or psycho-social workers or other experts.

Explanation.—For the purposes of this section, it is clarified that preliminary assessment is not a trial, but is to assess the capacity of such child to commit and understand the consequences of the alleged offence.

(2) Where the Board is satisfied on preliminary assessment that the matter should be disposed of by the Board, then the Board shall follow the procedure, as far as may be, for trial in summons case under the Code of Criminal Procedure, 1973 (2 of 1974):

Provided that the order of the Board to dispose of the matter shall be appealable under sub-section (2) of section 101:

Provided further that the assessment under this section shall be completed within the period specified in section 14

Section 18. Orders regarding child found to be in conflict with law.

(1) & (2) xxxxxxxxxxxx (not relevant)

(3) Where the Board after preliminary assessment under section 15 pass an order that there is a need for trial of the said child as an adult, then the Board may order transfer of the trial of the case to the Children's Court having jurisdiction to try such offences.”

7. Bare perusal of the aforesaid provision, clearly indicates that as and when a heinous offence is alleged to have been committed by a child, who has completed or is above the age of 16 years, the Juvenile Justice Board is required to conduct a preliminary assessment regarding his mental and physical capacity to commit the offence, the ability to understand the consequences of the offence and the circumstances in which the offence has

been committed and then to pass an order in accordance with provisions of Section 18 (3) of the Act. In case, after such preliminary assessment as mandated under Section 15 of the Act, the Juvenile Justice Board finds that there is a need for trial of the said child as an adult, then the Juvenile Justice Board is required to pass an order transferring the trial of the case to the Children’s Court having jurisdiction to try such offence.

8. In the present case, respondent No.2-accused has been found to be a child in conflict with law. Her age has been found to be above 17 years on the date of commission of offence i.e. more than 16 years. Heinous offence as per Section 2(33) of the Act includes the offence, for which the minimum sentence under the Indian Penal Code or any other law for the time in force is imprisonment for 7 years and more and as in the presence case, offence of murder is alleged to have been committed, so obviously respondent No.2-child is alleged to have committed a heinous offence.

9. In view of the aforesaid factual and legal position, the impugned order dated 20.02.2024 is hereby modified to the extent that the Juvenile Justice Board is directed to make necessary preliminary assessment in accordance with the provisions of Section 15 of the Act and then pass appropriate order in accordance with law.

Disposed of.

20.05.2024

Vivek

(DEEPAK GUPTA)
JUDGE

Whether reasoned/speaking : Yes
Whether reportable : No