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

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CRR No. 1495 of 2024 (O&M)**Date of decision: 04.09.2024****Lakshay****...Petitioner****Versus****State of Haryana****...Respondent****CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA**

Present:- Mr. Inder Singh Gahlawat, Advocate
for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

Mr. Rakesh Kumar Lathwal, Advocate
for the complainant.

MANISHA BATRA, J. (Oral)

1. The present revision petition has been filed by the petitioner, who is a child in conflict with law (*for short* 'CCL'), against the order dated 09.07.2024, passed by the Principal Judge, Juvenile Justice Board, Sonipat (*for short* 'the Board'), whereby an application, filed by the petitioner for grant of regular bail in case FIR No. 136 dated 28.09.2023, registered under Sections 148, 149, 302, 120-B of IPC and Sections 25 and 27 of the Arms Act, 1959 at Police Station Mohana, District Sonipat, had been dismissed as well as against the order dated 24.07.2024, whereby the appeal filed by the petitioner against the order of the Board had also been dismissed by the learned Additional Sessions Judge, Sonipat.
2. Shorn off unnecessary details, the case of the prosecution is that on the intervening night of 27/28.09.2023, on receipt of a telephonic

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information regarding homicidal death of one Anand and his dead body lying in the street of the village, a police party, headed by Inspector Rajpal had reached at the spot, wherein complainant Balbir, father of the deceased, recorded a statement to the effect that on the night of 27.09.2023, the victim had gone to watch the bicycle game near the old age home, when he was murdered by the petitioner and co-accused Deepak @ Mathori, Deepak, Sagar, Aman and Sandeep. He also disclosed that the assailants had fired shots with pistol of Deepak @ Mathori upon the victim and had also inflicted injuries with knife. After registration of the FIR, investigation proceedings were initiated. Inquest proceedings and postmortem examination of the dead body of the victim were conducted. The petitioner was detained on 02.05.2024. He had moved applications for grant of bail under Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (*for short 'Act, 2015'*), which were dismissed by the Board. As already discussed, the appeal filed by the petitioner against the order dated 09.07.2024, passed by the Board, has also been dismissed by the appellate Court.

3. It is argued by learned counsel for the petitioner that he is in custody since 02.05.2024. He has falsely been implicated in this case. The complainant is not an eye-witness to the occurrence. Neither there is any other eye-witness to the incident. It is a case based on circumstantial evidence. The Board as well as the lower appellate Court, while rejecting the prayer made by the petitioner for grant of regular bail, had ignored the well settled proposition of law that the provisions of Section 12 of the Act, 2015 are mandatory in nature and the same are very much applicable to the instant case.

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4. It is further argued by learned counsel for the petitioner that Section 12 of the Act, 2015 contemplates release of a juvenile on bail notwithstanding anything contained in the provisions of Code of Criminal Procedure. The petitioner had himself surrendered before the Board on 02.05.2024. The social investigation report as well as social background report do not reveal anything adverse qua the petitioner. The contents of the social background report were misread by the Board and the appellate Court. The inquiry has been completed. Challan/inquiry report already stands filed before the Board. The petitioner is not required to be kept in protective custody anymore. The trial is likely to take time. With these broad submissions, it is urged that the impugned orders are liable to be set aside; the revision petition deserves to be accepted and the petitioner deserves to be extended benefit of bail. To fortify his argument, learned counsel for the petitioner has relied upon the authorities cited as ***Jatin vs. State of Haryana : 2024 (2) RCR (Criminal) 143, Sumit vs. State of Haryana, CRR-1691-2021***, decided on 12.12.2022, ***Sachin @ Suraj vs. State of Haryana, CRA-S-149-2003***, decided on 12.07.2023 and ***Sourav vs. State of Haryana, CRM-M-55100-2023***, decided on 18.12.2023.

5. *Per contra*, learned State counsel, assisted by learned counsel for the complainant, has strenuously argued that the petitioner was detained in this case on 02.05.2024 after collection of sufficient evidence against him. He suffered disclosure statement admitting his active participation in the act of assaulting the victim by forming membership of an unlawful assembly with the co-accused and in prosecution of common object thereof. It is submitted

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that the material witnesses are yet to be examined. There are chances of the petitioner's intimidating them or absconding, if extended benefit of regular bail. The allegations against him are quite serious in nature. While passing the impugned orders, the Board as well as by the appellate Court, had taken into consideration the social background report and also the fact that there was danger of retribution by the society, which was likely to expose the petitioner to moral, physical or psychological danger, if extended benefit of bail. The appellate Court had taken into consideration the provisions of Section 12 of the Act, 2015 and had observed that his release on bail would be detrimental to his own right and he might indulge in similar kind of offences. It is further argued that the release of the petitioner on bail would also defeat the ends of justice, keeping in view the serious nature of the crime committed by him. While stressing that the impugned orders do not suffer from any infirmity or illegality, it is urged that the revision petition is liable to be dismissed.

6. I have heard learned counsel for the parties at considerable length and have also gone through the material placed on record carefully.

7. It is not in dispute that the petitioner was a Juvenile at the time of commission of the offences in question and even till date. The main question that falls for consideration before this Court is that as to whether while passing the impugned orders, the Board and the lower appellate Court, while rejecting the prayer made by the petitioner for grant of regular bail, acted within the four corners of Section 12 of the Act, 2015 or not ?

8. Section 12 of the Act, 2015 postulates rule of grant of bail for every child in conflict with law, who is alleged to have committed a bailable

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or non-bailable offence, if he/she is apprehended or detained by the police and is being produced before the Board. As per provisions of this section, such child has to be released on bail with or without surety As per proviso to this section, such child shall not be released if there appear to be reasonable grounds for believing that his/her 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.

9. From a bare reading of the provision of Section 12 of the Act, 2015, it appears that the intention of the legislature was to grant bail to a juvenile in conflict with law irrespective of the nature or gravity of the offence alleged to have been committed by him and the same can be declined only in cases where reasonable grounds are there for believing that the release is likely to bring him into association with any known-criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice. It is also well settled by now by a catena of judgments that the gravity of offence alleged to have been committed by a CCL cannot be taken as a ground for rejection of bail under Section 12 of the Act, 2015. Reference in this regard can be made to *Shiv Kumar @ Sadhu Vs. State of U.P. : 2010 (1) ACC 616*, *Krishan Kumar Vs State of Haryana : 2020 (2) RCR (criminal) 342* and *Vishal Vs State of Haryana : 2020 (4) RCR (criminal) 475*. Similar observations were made in *Jatin's* case (supra). It is, thus, clear

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that for invoking exceptions to Section 12 of the Act, 2015, for declining bail to a CCL, there has to be some material before the competent authority on the basis of which, it can be said that the release of the juvenile would fall within the exceptions recognized under Section 12 of the Act, 2015 and that the seriousness of offence as mentioned in the FIR would not be a ground to deny to the juvenile, concession of bail.

10. Now coming to the peculiar facts of the present case. As per the allegations, co-accused Deepak had a scuffle with the victim on the fateful night and then the petitioner and co-accused, who were accompanying co-accused Deepak, had formed membership of an unlawful assembly and in prosecution of common object thereof, they had assaulted the victim, raised shots with a pistol, which was carried by the co-accused, thereby causing homicidal death of the victim. The petitioner is alleged to have fired two shots upon the victim by taking pistol from co-accused Sagar. The social background report of the petitioner was filed by the Child Welfare Police Officer before the Board, which simply says that he was vulnerable to bad company and negative peer group influence. The social investigation report, however, did not elicit any such information as it was prepared only on the basis of the statement recorded by the father of the petitioner. Undisputedly, the gravity of the offence and charges has to be seen while granting anticipatory bail or regular bail under the provisions of the Code of Criminal Procedure, however, in case of grant of bail under the provisions of the Act, 2015, there is complete departure to the same as the ingredients mentioned under Section 12 of the Act, 2015 are to be adhered to in this regard and as

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discussed above, the merit and nature of the offence is not relevant for the purpose. The basic object of the provisions of the Act, 2015 is to provide care, protection, treatment and rehabilitation to juvenile in conflict with law. Undoubtedly, no indefeasible right exists in favour of a CCL for grant of regular bail under the Act, 2015, however, still at the same time, in view of Section 12 of the Act, 2015, ordinarily a juvenile deserves to be enlarged on bail, except in the circumstance as enumerated in the proviso thereof. On considering the orders passed by the Board and the lower appellate Court on the anvil of the ingredients for grounds of rejecting/granting the bail, I am of the opinion that the social background report, which was taken into consideration for dismissing the prayer made by the petitioner for grant of regular bail, could not be considered to be sufficient to arrive at the conclusion that the release of the petitioner on bail would bring him into association of any known criminal or expose him to moral, physical or psychological danger or would defeat the ends of justice. The Board and the lower appellate Court without having any material on record to come to the conclusion that the above said ingredients were satisfied, proceeded to decline the prayer of the petitioner in this regard. The observations made therein that there was likelihood of the petitioner's facing retribution and outrage from the members of the society and his release was likely to expose him to danger or would defeat the ends of justice are not based upon any cogent material. The petitioner had been detained on 02.05.2024. In *Sumit*'s case (supra), which has been cited by learned counsel for the petitioner, the benefit of bail was given to CCL after considering the period of incarceration and the social

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investigation report, which merely suggested causes of the problem as bad company and bad intention but did not say that the petitioner was a hardcore criminal or might go back to the same company, if released on bail. In ***Sachin @ Suraj***'s case (supra), the benefit of regular bail was given to a CCL facing inquiry for commission of offence under Section 302 of IPC by observing that the eye-witness had failed to identify the CCL and also by taking into consideration the period of his incarceration. In ***Sourav***'s case (supra), the prayer made by the CCL for grant of bail had been allowed by observing that except the personal opinion expressed by the Children Court, there was nothing to suggest that the petitioner would face wrath and outrage from the members of the society in case he was granted concession of bail. In ***Jatin***'s case (supra), benefit of bail was granted to a CCL by observing that the social information report showed that his relationship with his parents and siblings was cordial, his attitude towards his classmates and friends was normal, he himself was not the victim of any offence and that he was living in a normal urban locality.

11. It is not the case of the prosecution that the relationship of the petitioner with his own family members is not normal. There is nothing on record to suggest that his release on bail would bring him into association with any known criminal or expose him to any moral, physical or psychological danger or that would amount to defeating the ends of justice. In the given facts and circumstances, in my considered opinion, the impugned orders rejecting the prayer made by the petitioner are inappropriate as they are not shown to have exercised the jurisdiction vested in them in terms of the object of the

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Act, 2015. Hence, the impugned orders are liable to be set aside as it would in the fitness of things and in the interest of the petitioner to release him on bail since the ends of justice cannot be considered to be defeated only keeping in view the nature of the offences. Accordingly, the revision petition is accepted and the impugned orders are set aside. The petitioner is ordered to be released on bail and he be given in the custody of his mother/guardian, on her/his filing personal bonds and two sureties of the like amount to the satisfaction of the Court concerned with the undertaking that the mother/guardian shall keep the juvenile away from unsocial and criminal elements, will look after his health, keeping his mental and social status. She/he will also give an undertaking that on being released on bail, she/he will ensure his presence during trial before the Court concerned whenever so required.

12. Office is directed to transmit certified copy of this order to the Court concerned for information and necessary compliance.

04.09.2024

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No