IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

SR. No.232

CRR-2340-2023 (O&M)
Date of decision:19.03.2024

Deepak Raghav

…Petitioner

Versus

State of Haryana

…Respondent(s)

CORAM: HON'BLE MR. JUSTICE N.S. SHEKHAWAT

Present: Mr. Sarfraj Hussain, Advocate for the petitioner.

Mr. Karun Garg, AAG, Haryana.

N.S. SHEKHAWAT, J.

1. The petitioner, who is a juvenile, has filed the present petition with a prayer to set aside the order dated 31.07.2023 passed by the Court of Jasbir Singh, Additional Sessions Judge-cum-Special Children Court, Gurugram and the order dated 13.06.2023 passed by the Court of Principal Magistrate, Juvenile Justice Board, Gurugram, whereby the regular bail filed on behalf of the present petitioner/child in conflict with law, was ordered to be dismissed.

2. The FIR in the present case was registered on the basis of the statement made by Neetu wife of Rahul and the operative part of the said FIR has been reproduced below:-

> *"To, the SHO Sahib, Police Station Sector 10-A, Gurugram, Sir, it is respectfully submitted that I Neetu wife of Rahul am resident of village Vajidpur, Police Station Dado, District Aligarh (UP) and I along with my husband, son, mother-in-law and sister-in-law (Nanand) am residing in a rental*

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accommodation in the house of Yogender Tomar son of Jawahar Singh H.No.88, Street No.2, G Block, Sarswati Enclave, Sector 37, Gurugram. I and my Sister-in-law (Nanand) namely Surajmukhi are working as tailors in Plot No.585, Sector 37, Industrial Area and my husband Rahul was running a taxi make Swift Dzire No. HR-55AG-2921 on fare basis. On 21.02.2023, my husband had been coming in his car towards his rental accommodation at about 9.45 PM and we were present inside our room and by going outside, we saw that three unknown persons had come on a motorcycle and they were continuously firing shots towards my husband and while witnessing this, we saw that my husband Rahul had fallen in the street itself due to injuries suffered by him due to fire arm shots. We raised hue and cry loudly and the said three persons, on their motorcycle, had gone towards Hawa Mahal, Saraswati Enclave and while leaving they were saying in case anybody chases them, they would kill him. My sister-in-law (Nanand) Surajmukhi had made a phone call to Police Control Room No. 112 and gave information regarding sustaining fire arm injuries by my husband namely Rahul and we got admitted my husband at Civil Hospital, Sector 10 for his treatment, where the doctor had declared him dead after checking him. I can identify the said three unknown persons who have killed my husband by firing bullets on him if they come before me. It is requested to you that legal action may be initiated against the three unknown persons, who have killed my husband by inflicting fire arm shots to him and justice be done to us. I have submitted my written complaint to you. Sd/- Neetu, 22.02.2023, 9810495935, Attested Om Parkash SI PS Sector 10A GGM, Dt. 22.02.2023".

3. Learned counsel for the petitioner contends that in the present case, the petitioner has not been named in FIR nor there is any averment, which connects the petitioner in the alleged crime. Even as per the case set up by the prosecution, the petitioner had brought the ammunition for the

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pistols from Dwarka Express Way and handed over the said ammunition to Amit @ Kali. Apart from that, he had done **recce** of Rahul Solanki (since deceased) and had informed about his location to Amit @ Kali. Learned counsel further submits that as per the case of the prosecution itself, the petitioner had not actively participated in the commission of the crime and the firing was allegedly done by Amit @ Kali, Mohit Nagar and Mayank @ Monu. He further contends that the date of birth of the petitioner is 01.11.2005 and he was a "child in conflict with law" and is entitled for consideration of his bail plea, in terms of Section 12 of Juvenile Justice (Care and Protection of Children) Act, 2015 (for short `the Act'). He further contends that the petitioner belongs to a reputed family and has no criminal antecedents.

4. On the other hand, a status report has been filed by way of affidavit dated 28/11/2023 of Assistant Commissioner of Police, Gurugram and the same has been taken on record.

5. Learned State Counsel has vehemently opposed the submissions made by the petitioner on ground that the location of the mobile of the petitioner clearly proves that he was also present near the place of occurrence and he was constantly in touch with accused Amit @ Kali on phone. Even the petitioner had made a call on the mobile phone of Rahul Solanki (since deceased) for booking the taxi and he had informed the accused about the location of Rahul Solanki. Apart from that, he had brought ammunition for the pistols, which were used in the crime by the co-accused. However, learned State Counsel submits that the petitioner was present near the place of occurrence and had not caused any injury to Rahul Solanki (since deceased). Learned counsel also contends that one more FIR No.21

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dated 26.01.2023 under Sections 336/34 IPC and Sections 25 (1-B)(a)/27(1) of the Arms Act at Police Station New Colony, Gurugram was also registered against the present petitioner.

6. Having heard learned counsel for the parties and perusal of the case file, this Court is of the opinion that the present petition deserves to be allowed by this Court.

7. The Hon'ble Supreme Court has held in the matter of **Ramesh @ Meshu Vs. State of Haryana 2005 (1) RCR (Criminal) 65**, as follows:-

> *"I have heard the argument of the counsel for the parties and gone through the impugned orders passed by the Juvenile Justice Board as well as Additional Sessions Judge, Sonepat. In my opinion, rejection of bail application of the petitioner by the Courts below only on the ground that it will defeat the ends of justice, is wholly erroneous. The prosecution has not produced any material or evidence that release of the petitioner will defeat the ends of justice. The granting of bail to a juvenile is must notwithstanding anything contained in the Code of Criminal Procedure or in any other law for the time being in force. However, bail can only be declined in exceptional circumstances where it appears to the Court that the release of the petitioner 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. In the instant case, there is no reasonable apprehension that the release of the petitioner will bring him into association with any known criminal or expose him to moral, physical or psychological danger. The only exceptional reason given by both the Courts below is that release of the petitioner will defeat the ends of justice. This conclusion also, in my opinion, is not based upon material or any reasonable grounds."*

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8. While granting bail to a juvenile under Sections 302, 323, 148, 149 IPC, Hon'ble the Supreme Court has held in the matter of **Atul Kumar Vs. State of Haryana 2003 (4) RCR Criminal 404** as follows:-

> *"I am further of the view that there has to be some evidence on record showing that after the release on bail, the petitioners are likely to come in association with any known criminal or their release on bail would expose them to moral, physical or psychological danger or that their release would defeat the ends of justice. In a given case if the parents of the petitioners are also criminals either ex-convicts or members of a gang, it may be possible for the Court to refuse bail. Another example could be whether the petitioners have repeated the crime showing lapse on the part of the parents after their release while on bail, then the case may be covered by the exceptions carved out under Section 12 of the Act. However, in a case like the one in hand, where no material has been placed on record to show that the release of the 'juvenile in conflict with law' would defeat the ends of justice or any other exception, the petitioners cannot be denied the benefit of bail merely on the basis of conjectures or opinion formed by the prosecution or the Court. Reliance in this regard could be placed on the judgments in the case of Sahabuddin @ Shabboo's case (supra) and Sanjeev Kumar's case (supra)."*

9. Still further the Hon'ble Supreme Court has held in the matter of **Master Bholu (imaginary name) Vs. Central Bureau of Investigation & another, 2023 (1) RCR (Criminal) 180**, as follows:-

> *13. We have pondered over all the facts and circumstances of the case and the submissions made by learned counsel for the parties. As noticed in the first part of this order, the question remains to be examined as to whether the bail plea of the petitioner-appellant could be considered in terms of Section 12 of the Act of 2015 or not. However, fact of the matter remains*

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that the liberty of the petitioner-appellant in the face of the accusations of the present case has been curtailed and for that matter, he is in detention for a period of one month less five years.

14. Even while looking at the serious nature of the crime in question but without making any other comment on the merits of the case either way, the requirement of balancing the competing claims and equities cannot be ignored. For that matter, we cannot ignore the fact that the petitioner-appellant had been of the age of sixteen years and four months when he was taken in detention and at present, he is twenty-one years of age. Although, he is at present housed in correction/observation home but and yet, his continued detention until completion of the trial may carry its own adverse effects. On the other hand, the apprehensions voiced on behalf of the respondents cannot be ignored either.

15. Therefore, even while we are inclined to grant indulgence to the petitioner-appellant by way of interim bail, we propose to put him to specific terms and conditions while providing for expeditious proceedings in the trial.

10. In the present case, the date of birth of the petitioner is 01.11.2005 and on the date of commission of offence i.e. 21.02.2023, the petitioner was aged about 17 year. Thus, he was a child in conflict with law, in terms of Section 2(13) of the Act and is entitled for consideration of his bail plea, in terms of Section 12 of the said Act. Even the prosecution could not place any document to show that the parents of the petitioner had any criminal background. Still further, in case the petitioner stays in custody for a longer period, there is every likelihood that he might come in contact with other known criminals. Still further, as per the case set up by the prosecution itself, the petitioner had only done the **recce** and was in touch with Amit @ Kali. Still further, he is in custody since 22.02.2023 i.e. for the last about one

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year and one month. Moreover, the petitioner was not present at the place of alleged occurrence. Thus, no purpose will be served by keeping the petitioner behind the bars.

11. Without commenting on the merits of the case, the present petition is allowed and the petitioner is ordered to be released on bail subject to his furnishing bail bonds/surety bonds to the satisfaction of the Principal Magistrate, Juvenile Justice Board, Gurugram/Duty Magistrate/Chief Judicial Magistrate, concerned.

(N.S. SHEKHAWAT)
JUDGE

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Whether Speaking/Reasoned: YES / NO
Whether Reportable: YES / NO

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