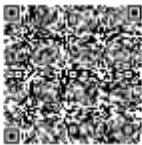


2025:PHHC:024672



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR 84 of 2025
Date of Decision: 19.02.2025

S		...Petitioner
	Versus	
State of Haryana		... Respondent

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

Present : Mr. Sandeep Gahlawat, Advocate, for the petitioner.
Mr. Gurmeet Singh, AAG, Haryana.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the present revision petition against the impugned order dated 24.12.2024 passed by the Court of Additional Sessions Judge, Rohtak and order dated 25.10.2024 passed by the Principal Magistrate, Juvenile Justice Board, Rohtak, whereby, the prayer made by the petitioner for grant of concession of bail was declined.
2. Learned counsel for the petitioner contends that the petitioner was not named in the FIR by the complainant and has been nominated as accused on the basis of the disclosure statement dated 1st September 2024 allegedly suffered by Dipanshu, co-accused. Still further, it has been alleged that Rajeev @ Raju @ Deela Pehalwan, injured had also made a statement under Section 164 Cr.P.C. on

11.10.2024, wherein, he had improved his version and named the petitioner and four others as accused in the present case. Learned counsel further contends that the petitioner was not attributed any specific injury on the person of the complainant or injured witnesses. Further, Rajeev @ Raju @ Deela Pehalwan, injured witness had himself left P.G.I.M.S. Rohtak at 10.00 a.m., on 23.04.2024, against medical advice and got himself admitted in some private hospital and has already been discharged from the hospital in stable condition. Even, the petitioner is a child in conflict with law and on the date of occurrence, his age was 17 years and 23 days. Thus, in view of the provisions contained in Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015, he may be ordered to be released on bail. Still further, the petitioner was arrested in the present case on 2nd September 2024 and after completion of investigation, challan has already been presented against him. The prosecution has relied upon 32 witnesses, but no witness has been examined so far in the present case. Further, the petitioner is a regular student of Swami Nitinand Senior Secondary, School, Village Brahmanwas, District Rohtak and he has to appear in the final exams of 10+2 (non-medical), which are scheduled to be held in next few days. Apart from that, the petitioner is not involved in any other crime.

3. A status report by way of an affidavit of the Deputy Superintendent of Police, Rohtak, has been filed on behalf of the respondent-State and the same is taken on record.

4. Learned State counsel has vehemently opposed the prayer made by the petitioner on the ground that the petitioner and his co-accused had caused serious injuries to the injured in the present case. Apart from that, the petitioner is clearly seen in CCTV Camera and he could be seen moving near the place of occurrence, duly armed with a pistol. The age of the petitioner is above 16 years and if released on bail, he may associate with other known criminals of the area and may also intimidate the victims of the crime.

5. I have heard learned counsel for the parties and perused the record.

6. This Court has considered the question as to whether a juvenile, who is being tried as an adult can be the beneficiary of the provisions of Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015 in the matter of **Sachin @ Suraj Vs. State of Haryana**, 2023(3) Law Herald 2036 and held as follows:-

“7. The question that arises for determination is, whether on being tried as an adult, is the juvenile denuded of statutory right available to him under Section 12 of the Act. However, the said question is no more res integra and has been deliberated upon by several High Courts. Before I proceed to deal with the said decision, it would be necessary to reproduce the Section 12 of the “Act”, which is a provision pertaining to the release of a child alleged to be in conflict with the law and it reads as under:-

“12. Bail to a person who is apparently a child alleged to be in conflict with law-.

1. 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.

2. When such person having been apprehended is not released on bail under Sub-Section (1) by the Officer-in-Charge of the police station, such officer shall cause the person to be kept only in an observation home [or a place of safety, as the case may be] in such manner as may be prescribed until the person can be brought before a Board.

3. When such person is not released on bail under SubSection (1) by the Board, it shall make an order sending him to an observation home or a place of safety, as the case may be, for such period during the pendency

of the inquiry regarding the person, as may be specified in the order.

4. When a child in conflict with law is unable to fulfil the conditions of bail order within seven days of the bail order, such child shall be produced before the Board for modification of the conditions of bail. In the scheme of enactment, it can be seen that Section 12 contains an imperative mandate to release a child on bail, when he is apprehended or detained in connection with an offence and it is a special provision, which stand to the exclusion of the Code of Criminal Procedure, Section 5 of the Cr.PC contained a saving clause, which reads thus:-

“5.Saving:- *Nothing contained in this Code shall, in the absence of specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred or any special form or procedure prescribed, by any other law for the time being in force.”*

The parameters for considering an application for bail filed by a juvenile under Section 12 of the Act of 2015 are clearly distinguishable from the application filed under Section 439 of Cr. PC and after following the procedure as prescribed under the Act i.e. from Sections 15 to 18 when a decision is taken to try a juvenile as an adult, the issue that arises for consideration is upon, such a contingency, whether the benefit of Section 12 can be denied to him.

Even when a child is sent up for trial as an adult before a Children’s Court, the child does not become an adult or ‘major’, but is only to be treated differently considering the heinous nature of the offence alleged

and consequent need for a stricter treatment of the offender, though still as a juvenile in conflict with law. It must be borne in mind that the Legislature has created this categorization based upon an assessment of the child's mental and physical capacity to commit such offence, ability to understand the offence. If the intention of the Legislature was that upon such assessment, the child would de-jure become an adult, then the question of there being a separate Children's Court to try him with specific safeguards provided for the trial would not arise. That however is not the case.

8. In fact, the "Act" is a beneficial piece of legislation and it must be construed by taking into consideration the object behind its enactment, being to provide for the care, protection, treatment, development and rehabilitation of neglected or delinquent juveniles. It is a beneficial legislation aimed at making available the benefit of the Act to the neglected or delinquent juveniles. While construing the provisions contained in Section 12 of the "Act", which contemplates that a juvenile shall be released on bail notwithstanding anything contained in Cr.PC and Section 12 further provides that he may be released with or without sureties, or may even place under the supervision of Probation Officer or under the care of any fit person. The only embargo not releasing such a person on bail is the proviso, which prescribes that if there appears reasonable grounds for believing that the release is likely to bring that person into the association with any known-criminal or expose the said person to moral, physical or psychological danger or the person/persons release would defeat the ends of justice.

9. In the present case, it appears that the Children's Court had rejected the application without adverting to the statutory mandate of Section 12 of the "Act". No doubt, the appellant/CCL was directed to be tried like an adult, but still he remains a juvenile in conflict with law and can never be denied the benefit of Section 12 of the "Act". Apart from that, it is apparent that the occurrence was alleged to be witnessed by Kartik, Saurav and Manoj. However, from the perusal of their depositions, it is apparent that they had failed to identify the appellant. Apart from that, even Dalip Kumar, who was the witness to recovery memo had also refused to support the case of the prosecution and stated that no recovery was effected in front of him and the police had obtained the signatures on blank papers. It is also not in dispute that the present appellant was arrested in the present case on 07.12.2020 and is continuing in custody which may bring him in association with any known criminals and his right to speedy trial under Article 21 of the Constitution of India is also violated".

7. Now adverting to the facts of the present case, in the light of the above settled principles of law, it can be safely concluded that the present petition deserves to be allowed by this Court. No doubt, the petitioner was seen moving at the place of occurrence with a pistol, however, no specific injury has been attributed to him. Still further, the injured in the present case have already been discharged from the hospital. The petitioner was arrested on 02nd September 2024 and is in custody for the last more than 05 months. Further, the prosecution has not been able to examine even a single witness so far

and the petitioner is not in a position to influence the witnesses in the present case.

8. In view of the above discussion, the present revision is allowed and the petitioner is ordered to be released on bail pending trial on his furnishing bail bonds and surety to the satisfaction of the concerned trial Court/ Duty Magistrate/Chief Judicial Magistrate.

9. It is further ordered that the petitioner shall attend the trial on regular basis and shall also report to the Probation Officer once in every two months and his performance and conduct shall be monitored by the Probation Officer. Apart from that, on being released on bail, the petitioner shall furnish his contact number and residential address to the Investigating Officer as well as the trial Court and shall also keep them updated, in case there is any change.

10. The above observations have been made, only for the limited purpose of disposal of the present revision petition and nothing stated above shall be construed as an expression on the merits of the case and the trial Court shall decide the trial on the basis of the material placed before it.

19.02.2025
amit rana

(N.S.SHEKHAWAT)
JUDGE

Whether reasoned/speaking : Yes/No
Whether reportable : Yes/No