

CRR-949-2025

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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Decided on: 19.05.2025

Akarsh Rai (Minor) through father ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Avtar Singh Bhatti, Advocate
for the petitioner.

Mr. Sukhwinder Singh Rai, DAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
237	20.07.2024	Derabassi, SAS Nagar Mohali	125, 351(2)(3), 109, 111(2)(3)(4) of BNS 2023 and 25/54/59 of Arms Act

Criminal Appeal CRA207/2024 CNR No.PBSA010078002024 Date of decision: 25.10.2024
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1. The petitioner, who is a minor, incarcerated in the FIR captioned above had come up before this Court by filing the present revision petition under Section 102 of Juvenile Justice Act, by challenging the orders dated 02.09.2024 passed by the Juvenile Justice Board, SAS Nagar Mohali and order dated 25.10.2024 passed by the Additional Sessions Judge, Mohali, whereby his bail application was rejected.
2. As per paragraph 8 of the petition, father of the CCL (Child in conflict with law) declares that petitioner was involved in similar case, in which he is on bail.
3. The facts and allegations are being taken from the order dated 25.10.2024 passed by the Additional Sessions Judge, SAS Nagar, Mohali, which reads as follows:

“Perusal of the record indicates that FIR has been registered on the statement suffered by Usha Rani wife of Shiv Kumar, interalia, alleging that she is working as a receptionist in Appolo Dionesis, Tech Colony, Dera Bassi. On 20.07.2024 at about 12:40 P.M, she was sitting in the reception cabin and suddenly two young persons, who had muffled their faces, handed over a folded slip to her and both of them went outside the hospital where their third companion was waiting. Thereafter, one of the

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young persons took out a pistol and fired in the air and thereafter, fled away towards Gulabgarh side on a motorbike. On opening the folded slip, it was found to be an extortion letter allegedly issued by the gang of Kaushal Chaudhay asking the victim to call at whats app mobile number and the letter also contained a threat that they had only fired one shot and if call was not made then there would be 101 gun shots fired. CCTV footage was retrieved from the hospital. Applicant was apprehended. Three young boys including the applicant were apprehended. All were found to be juveniles. Arms and ammunition were recovered from them. On checking of the mobile phone, it was found that they had downloaded Zangi App which of late is being used by the gangsters and anti social elements because of its high end encryption. During questioning, juveniles disclosed that they used to speak to gangster Kaushal Chaudhary through Zangi App and the extortion bid was made at his behest.”

4. The petitioner's counsel prays for bail and submits that separation from parents and detention in protective care would cause an irreversible injustice to the petitioner and their family.

5. The State's counsel opposes the bail.

6. It shall be appropriate to refer to the following provisions of the Juvenile Justice (Care and Protection Of Children) Act, 2015:

S. 2(35) “juvenile” means a child below the age of eighteen years;

S. 2(12) “child” means a person who has not completed eighteen years of age;

S. 2(13) “child in conflict with law” means a child who is alleged or found to have committed an offence and who has not completed eighteen years of age on the date of commission of such offence;

S. 2(33) “heinous offences” includes the offences for which the minimum punishment under the Indian Penal Code (45 of 1860) or any other law for the time being in force is imprisonment for seven years or more;

S. 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 1[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 sub-section (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.

S. 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.

S. 18. Orders regarding child found to be in conflict with law.—(1) Where a Board is satisfied on inquiry that a child irrespective of age has committed a petty offence, or a serious offence, or a child below the age of sixteen years has committed a heinous offence, 1[or a child above the age of sixteen years has committed a heinous offence and the Board has, after preliminary assessment under Section 15, disposed of the matter] then, notwithstanding anything contrary contained in any other law for the time being in force, and based on the nature of offence, specific need for supervision or intervention, circumstances as brought out in the social investigation report and past conduct of the child, the Board may, if it so thinks fit,—

(a) allow the child to go home after advice or admonition by following appropriate inquiry and counselling to such child and to his parents or the guardian;

(b) direct the child to participate in group counselling and similar activities;

(c) order the child to perform community service under the supervision of an organisation or institution, or a specified person, persons or group of persons identified by the Board;

(d) order the child or parents or the guardian of the child to pay fine:

Provided that, in case the child is working, it may be ensured that the provisions of any labour law for the time being in force are not violated;

(e) direct the child to be released on probation of good conduct and placed under the care of any parent, guardian or fit person, on such parent, guardian or fit person executing a bond, with or without surety, as the

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Board may require, for the good behaviour and child's well-being for any period not exceeding three years;

(f) direct the child to be released on probation of good conduct and placed under the care and supervision of any fit facility for ensuring the good behaviour and child's well-being for any period not exceeding three years;

(g) direct the child to be sent to a special home, for such period, not exceeding three years, as it thinks fit, for providing reformatory services including education, skill development, counselling, behaviour modification therapy, and psychiatric support during the period of stay in the special home:

Provided that if the conduct and behaviour of the child has been such that, it would not be in the child's interest, or in the interest of other children housed in a special home, the Board may send such child to the place of safety.

(2) If an order is passed under clauses (a) to (g) of sub-section (1), the Board may, in addition pass orders to—

(i) attend school; or

(ii) attend a vocational training centre; or

(iii) attend a therapeutic centre; or

(iv) prohibit the child from visiting, frequenting or appearing at a specified place; or

(v) undergo a de-addiction programme.

(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. The date of occurrence was 20.07.2024 and the petitioner is a minor.

8. Per Section 12 of the Juvenile Justice Act, 2015, 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 CrPC, 1973/ BNSS, 2023 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 the care of any fit person. However, as per the proviso, such a person shall not be released if there appear to be 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. Given this, the following aspects have to be considered by the Juvenile board:

- 1) The release will likely bring the child into association with any known criminal.
- 2) Expose the child to moral, physical, or psychological danger.
- 3) The child's release would defeat the ends of justice.

9. While rejecting the bail, Ld. Additional Sessions Court relied upon the Social Investigation Report in the following terms:

"6. In the impugned order it was also observed that as per Social Investigation Report (SIR) juveniles behaviour towards his family was good but it was found company of juvenile was bad and he was in the

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habit of keeping arms and though image of family of was positive but his image was negative in the neighbourhood. Ld. JJB also recorded a reason that case was at the stage of evidence of prosecution and eye witness had yet not been examined and as such taking into account the SIR, nature of commission of offence and non examination of eye witness juvenile in conflict with law it would defeat the ends of justice if bail was granted to juvenile.”

10. Given the above, the reasons are not in terms of the statutory requirement of Section 12 of the JJ Act.

11. Undoubtedly, the offence is serious, but the petitioner was under 18 years of age at the time of the occurrence. Thus, he could have been separated from his lawful guardians only after meeting the statutory conditions of the JJ Act, which was prima facie not done.

12. Resultantly, the petitioner's custody be handed over to his parents subject to the condition that they shall be responsible for the petitioner's good behavior and shall ensure that the petitioner, who is a child in conflict with the law, does not repeat any offense. The petitioner will be released after his parents furnish a bond to the satisfaction of concerned board.

13. Consequently, the impugned order dated 25.10.2024 is set aside.

14. Any observation made hereinabove is neither an expression of opinion on the case's merits nor shall the trial Court advert to these comments.

15. There would be no need for a certified copy of this order for furnishing bonds, and any Advocate for the Petitioner can download this order along with case status from the official web page of this Court and attest it to be a true copy. If the attesting officer wants to verify the authenticity, such an officer can also verify its authenticity and may download and use the downloaded copy for attesting bonds.

17. Petition allowed in aforesaid terms. All pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

19.05.2025
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Whether speaking/reasoned: Yes
Whether reportable: No.