

2025:PHHC:017660



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

**CRM M-39628 of 2024 (O&M)
Date of Decision:03.02.2025**

Robin @ Pandit ...Petitioner
Versus
State of Haryana ... Respondent

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

Present : Ms. Puja Chopra, Advocate, for the petitioner.

Mr. Gurmeet Singh, AAG, Haryana.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the instant petition under Section 483 of the BNSS with a prayer to grant a regular bail in case FIR No.33 dated 20.01.2023 registered under Sections 302, 201 and 34 IPC (later on added Sections 392 and 394 of IPC) (Annexure P-1) at Police Station Sadar Tauru, District Nuh (Mewat).
2. The FIR in the present case was registered on the basis of the statement made by Satya Parkash son of Chhutan Lal and the same has been reproduced below:-

“To, SHO, PS: Sadar Tauru. Sir, it is submitted that myself Satya Parkash s/o Chhutan Lal is r/o Village Budi Bawal, PS: Khushkhera, Teshil Kot Kasim, District Alwar (Rajasthan). The son of my maternal uncle namely Davinder Yadav s/o Jai Singh resident of village Devla, Police Station Kishangarh Baas, District Alwar

(Rajasthan) aged about 34 years, who was living at my residence at Budi Bawal for a long time and was doing a job as a driver at Honda Logistics Company, Khushkhera, Bhiwari. Since yesterday night i.e. 19.01.2023 he did not return home from the company. Today morning I called at his mobile No. 96490-18570 but his phone was switched off. Then I went to his company and enquired about him, then I came to know from the company that he had gone to drop the Manager of the Company Sarazuddin to Minda Company, Sector 2 Manesar on Honda Jass White Colour, bearing No. DL 13 CC 0748 and who has not returned till now. Then myself at my own level alongwith his family members searched for him here and there but did not come to know about anything. Today Lokesh the younger brother of Davinder received an information from Police Station Sadar Tauru that a dead body of a young man has been found lying near KMP Dhulawet. On this information myself, Lokesh and his other family members went to KMP Dhulawet at the spot and I recognized the dead body lying near KMP Dhulawet by seeing the same which was of Davidner son of my maternal uncle, who has been murdered by some unknown persons and has kept their with an intention to hide the dead body and have absconded on the car of the aforesaid company. Legal action be taken against them and the persons who have committed the murder of Davidner son of my maternal uncle be searched and strict legal action be taken against them. Sd/- S. Parkash applicant. Satya Parkash r/o Village Budi Bawal, PS: Khushkhera, Teshil Kot Kasim, District Alwar.”

3. Learned counsel for the petitioner contends that the petitioner has not been named in the FIR nor the petitioner had any concern or connection either with the deceased or with the alleged occurrence. As per the prosecution, Gaurav Singh was allegedly joined in the investigation, who made a statement that the mobile of the deceased was given to him by Chintu, Shekhar and the present petitioner. Only on the basis of the said statement, the petitioner was involved by the police in the present case whereas no action was taken against Gaurav Singh aforesaid, who was in possession of the mobile of the deceased. This itself raises serious question mark with regard to the authenticity of the prosecution version. Learned counsel has further referred to the confessional statements (Annexures P-3 and P-4) and stated that the statements were recorded by the police on its own and it was highly unsafe to prosecute the petitioner on the strength of such confessional statements, recorded in police custody. Still further, no recovery was effected from the petitioner and the identity card of Davinder, since deceased, is falsely shown to have been recovered from the petitioner. In fact, the petitioner had no reason to retain the I card of the deceased and the said article has been planted by the police on him. Learned counsel further submits that even the location of the mobile phone of the petitioner was not in the area where the crime was committed. Still further, the date of birth of the petitioner is 25.10.2005 and on the date of occurrence, the age of

the petitioner was 17 years and 03 months. The petitioner was arrested in the present case on 29.01.2023 and is in custody for the last more than 02 years. The petitioner has already been declared a juvenile in conflict with law and was ordered to be confined in observation home Faridabad. However, vide order dated 18.05.2023, the Principal Magistrate, Juvnile Justice Board, Nuh had transferred the case of the petitioner to the Children Court for being tried as an adult. Learned counsel submits that even though, the petitioner has been ordered to be tried as an adult, still, he is entitled to the statutory benefit of Section 12 of the Juvenile Justice (Care and Protection of Children Act 2015).

4. On the other hand, learned State counsel has vehemently opposed the prayer made by the present petitioner on the ground that the petitioner alongwith two other co-accused had committed the murder of Davinder, since deceased. Even, the identity card of the deceased was recovered from him. He alongwith other co-accused had taken lift from Davinder, since deceased, and had thrown the dead body near KMP Dhulawat, after committing his murder. They had been identified with the vehicle from the CCTV camera of the toll plaza. Thus, it was prayed that the present petition may be ordered to be dismissed.

5. While discussing the provisions of Section 12 of the Juvenile Justice (Care and Protection of Children Act 2015), this

Court has held in the matter of **Sachin @ Suraj Vs. State of Haryana, 2023(3) Law Herald 2036** 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”.

6. In the present case also, it appears that the Court of Additional Sessions Judge, Nuh, has dismissed the bail application of the petitioner even without advertting the statutory mandate of Section 12 of the Act. No doubt, the present petitioner was to be tried like an adult, but he continues to be a juvenile in conflict with law and it is inappropriate to deny him the benefit of Section 12 of the Act. Still further, at this stage, the petitioner is in custody for the last more than 02 years and the trial is not making any headway. Still further, the prosecution is yet to lead evidence with regard to involvement of the petitioner and his further custody will not serve any meaningful purpose.

7. In view of the above discussion, the present petition 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.

8. 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.

9. The above observations have been made, only for the limited purpose of disposal of the present bail application 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.

10. All pending applications, if any, are disposed off, accordingly.

03.02.2025
amit rana

(N.S.SHEKHAWAT)
JUDGE

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