

Before Vikas Bahl, J.

ALTAF—Petitioner

versus

UNION TERRITORY, CHANDIGARH—Respondents

CRR No. 2442 of 2022

December 07, 2022

Juvenile Justice (Care and Protection of Children), Act, 2015—S.12—Indian Penal Code, 1860—Ss. 419, 420, 467, 468, 471, 384 and 120-B. Held, under Section 12 bail is the rule only in case the case falls under exceptions, as mentioned in the Section, can bail be denied—No observation in social investigation report bringing exceptions into play—Bail granted.

Held, that in an application under Section 12 of the Act, bail is the rule and only in case the appellant is covered under any one of the exceptions, as mentioned in Section 12 of the Act, bail application can be rejected.

(Para 12)

Further held, that there is no observation in the report to the effect that the petitioner would come into association with any known criminal or would expose the said person to moral, physical or psychological danger or the petitioner's release would defeat the ends of justice, rather, a perusal of the report would show that the petitioner has already passed class 11th and is desirous of joining 12th class and his attitude is friendly and a perusal of the order dated 28.09.2022 would show that in paragraph 6, it has been observed that the petitioner was a juvenile at the time of the incident and is a meritorious student and the intent of the Board was to keep him in custody for “some time”.

(Para 13)

Mohammad Arshad, Advocate, for the petitioner.

Akashdeep Singh, Addl. PP UT Chandigarh.

VIKAS BAHL, J. (ORAL)

(1) Challenge in the present Criminal Revision is to the order dated 28.09.2022, vide which, an application filed under Section 12 of the Juvenile Justice (Care and Protection of Children), Act, 2015 for

grant of bail in FIR No.21 dated 17.08.2022 registered under Sections 419, 420, 384 and 120-B of Indian Penal Code, 1860 (Sections 467, 468, 471 of IPC have been added later on) at Police Station Cyber Crime, District Chandigarh, has been dismissed.

(2) Challenge has also been made to the order dated 15.10.2022, vide which, the appeal filed against the abovesaid order dated 28.09.2022 has also been dismissed.

(3) Learned counsel for the petitioner has submitted that the petitioner has been falsely implicated in the abovesaid case and he is in custody since 20.08.2022 and investigation is complete and challan has been presented and there are 20 prosecution witnesses, out of which, none have been examined as yet and thus, the conclusion of trial is likely to take time and that the petitioner is not involved in any other case. It is further submitted that even a perusal of order dated 28.09.2022 would show that the PMJJB, Chandigarh while rejecting the bail application of the petitioner had recorded that the present petitioner is a meritorious student and the Board believes that "at least for some time he needs to be kept under observation home". It is contended that even after 28.09.2022, a period of more than two months has elapsed and thus, the petitioner deserves to be released on bail. It is further contended that the petitioner was not named in the FIR and there is nothing to link the present petitioner with the alleged offence inasmuch as, although, three mobile phones have been recovered from the present petitioner but no complaint has been filed by any person to the effect that the said three mobile phones were used for extorting money from them, although, as many as 197 complaints have been received in the present case. It is argued that the petitioner is sought to be implicated on the basis of the disclosure statement of the co-accused. It is further argued that apart from the fact that the petitioner has a good case on merits, even a perusal of the Social Investigating Report (Annexure R-2) filed along with the reply by the State would show that it has been stated that the petitioner has passed class 11th and he wants to get himself enrolled in 12th class and even the attitude of the petitioner is friendly and it has been stated in Clauses 39 and 40 of the said report that the query raised with respect to the child being in any gang etc. for peddling drugs, the answer is in the negative. It is also submitted that as far as the case of the petitioner is concerned, he has stated that he is a resident of Haryana who had gone to meet his sister but was apprehended. Learned counsel for the petitioner has also contended that a perusal of the said

report would show that none of the exceptions as mentioned in Section 12 are remotely made out in the present case and that the present petitioner has no link with any other accused person, inasmuch as, out of 16 accused persons, 15 persons are residents of Rajasthan whereas the present petitioner is a resident of Haryana.

(4) Learned State counsel, on the other hand, has opposed the present Criminal Revision and has submitted that in the present case, a very serious crime has been committed inasmuch as a racket of sextortionist is being run by a gang of people, inasmuch as, 197 complaints have been received all over the country and the police is carrying on investigation with due diligence. It is, however, not disputed that 197 complaints which have been made by various persons all over the country, are not related to the mobile phones recovered from the present petitioner.

(5) This Court has heard learned counsel for the parties and has perused the paper book.

(6) Before advertng to the facts of the present case, it would be relevant to take note of Section 12 of the Act of 2015 and the same is reproduced hereinbelow:-

‘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.”

(7) A perusal of the above reproduced Section 12 of the Act would show that bail is the rule and not jail in case of a juvenile and the same is to be refused only in case the Court comes to the conclusion on the basis of material before it, that the case is covered under the three exceptions mentioned in Section 12 of the Act.

(8) A Co-ordinate Bench of this Court in CRR-1019-2020 passed in *Gurkirat @ Gora versus State of Haryana* has held as under:-

“Prayer in this revision petition is for setting-aside the order dated 31.05.2020 passed by the learned Magistrate as well as the order dated 01.07.2020 passed by the Appellate Court vide which the regular bail application of the petitioner in FIR No.99 dated 14.03.2020 registered under Sections 302, 323, 341 read with Section 34 and 506 of the Indian Penal Code, 1860 (in short 'IPC') at Police Station Taraori, District Karnal was dismissed.

Brief facts of the case are that the FIR was registered on a complaint given by Lakhwinder Singh that he is doing labour work and is having two children. His son Aspi @ Happy was also doing the labour work with the complainant. About 01 year ago, Kulwinder Singh, father of the petitioner has levelled allegations on the son of the complainant that he had teased his niece and thereafter, a Panchayat was convened and the matter was compromised but the accused were having a grudge against his son namely Aspi @ Happy. On 13.03.2020 at about 07:00 PM, his son Aspi @ Happy along with his mother Harvinder Kaur and nephew of the complainant namely Gurpreet Singh have gone to take the medicine for Harvinder Kaur on a motorcycle bearing registration No.HR- 05-BC-8967 and when they reached at Sambhi turn, then Kulwinder Singh, Gurkirat @ Gora (present petitioner) along with two other persons namely Karnail Singh and Balkar Singh waylaid them and thereafter, Balkar Singh, who was having a Binda in his hand, gave blow of same on the chest of the son of complainant. Then, Kulwinder Singh gave another Binda blow on the back of the son of the complainant, Karnail Singh gave Binda blow on the chest of the son of the complainant and the petitioner – Gurkirat @ Gora gave an iron pipe blow on the chest and back of the son of the

complainant. Thereafter, all the assailants ran away from the spot and the injured was taken to hospital where he was medico legally examined and later on, he had died on 14.03.2020.

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Learned senior counsel for the petitioner has submitted that as per the provisions of Section 12 of the Act of 2000, the intention of the legislature is to grant bail to the juvenile irrespective of the nature or gravity of the offence, alleged to have been committed by him and the same can be declined only in case where reasonable grounds are there for believing that the release of juvenile is likely to bring him into the association of any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice.

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Reply by way of affidavit of the Investigating Officer is on record and as per the reply, it is stated that upon verification, it was found that the petitioner as well as his father have caused injuries to the victim whereas the two persons namely Karnail Singh and Balkar Singh, named in the FIR were found innocent.

Counsel for the State has placed on record the opinion regarding cause of death of the deceased, which is reproduced as under:

“The opinion regarding the cause of death has already been given in this case on 20.10.2020 that “the cause of death in this case are injuries and its complications”. In our opinion, it was a case of poly-trauma having Severe Acute Respiratory Distress Syndrome and Shock with Glasgow Coma Scale E1M1V1 as reported in the hospital record and the findings noticed during autopsy and histopathological examination of viscera of deceased corroborated with the hospital record. In our opinion, the complications due to injuries were Acute Respiratory Distress Syndrome followed by Cardiac Arrest.”

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Counsel for the complainant, on the other hand, has

argued that as per the FIR, there is an enmity between the family of the complainant and father of the petitioner Kulwinder Singh on account of teasing the daughter of Kulwinder Singh i.e. the sister of the present petitioner – Gurkirat @ Gora by the deceased Aspi@ Happy about 01 year ago, prior to the incident and the matter was compromised in the Panchayat. It is further submitted that since the petitioner is above 17 years of age, he should be treated as an “Adult” and therefore, his bail application be declined.

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Accordingly, the present revision petition is allowed, the dated 31.05.2020 passed by the learned Magistrate as well as the order dated 01.07.2020 passed by the Appellate Court, are set-aside and the petitioner is directed to be released on bail subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate/Illaqa Magistrate.”

(9) A perusal of the above-said case would show that even where the allegation against the petitioner therein (Gurkirat @ Gora) was that he gave an iron pipe blow on the chest and back of the son of the complainant, the petitioner therein was released on bail.

(10) A Coordinate Bench of this Court was pleased to grant bail in case titled as *Vishnu versus State of Punjab*¹, wherein the allegation was that the petitioner therein had inflicted the injury on the head of the deceased and a bloodstained wooden stick was recovered from the petitioner therein. Relevant portion of the said judgment is reproduced hereinbelow:-

“Petitioner, who is a child in conflict with law, has filed the instant petition through his father, challenging the orders dated 15.01.2021, Annexure P-2, whereby application for grant of bail under Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short “the Act”) has been declined by the Principal Magistrate, Juvenile Justice Board, Rohtak and order dated 02.02.2021 passed by learned Additional Sessions Judge, Rohtak whereby appeal filed against the

¹ 2021 (3) RCR (Cr.) 239

said order has been dismissed.

Facts, in brief, are that on the basis of a complaint by Rajender, FIR No.214 dated 28.05.2020 was registered under Section 201, 302, 34 of the Indian Penal Code and Section 3 (2) (vi) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short “SC & ST Act”) on the allegation that Amit alias Neetu and the present petitioner have murdered his son Sombir. During investigation, the petitioner and the co-accused were apprehended on 28.05.2020 and they admitted their involvement in the homicide in their disclosure statement.

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Opposing the petition, State counsel, who is assisted by the counsel for the complainant, upon instructions from SI Bhagat Singh submits that the petitioner inflicted the injury on the head of the deceased and a blood stained wooden stick as well as a motorcycle used in the crime have been recovered from the petitioner. As per his instructions, challan has been presented on 23.07.2020, charge has been framed on 10.03.2021 and the trial is fixed for 03.06.2021 for recording of statement of prosecution witnesses though none of the witnesses has appeared in the witness box so far. He submits that if the petitioner, is released on bail, there is a likelihood of his coming in contact with criminals. According to the respondents, an application for re-determining the age of the petitioners is pending before the Trial Court.

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Grant of bail to a child in conflict with law is a rule and rejection of the same is an exception. Section 12 of the Act provides that notwithstanding anything contained in the Code of Criminal Procedure or in any other law for the time being in force, except for the three contingencies, specified in proviso to Section 12 (1) of the Act, the grant of bail to a child in conflict with law cannot be declined. The Courts have even gone to the extent of holding that neither the gravity of the offence nor the fact that the co-accused are yet to be apprehended is a ground to reject the prayer. The Courts below have failed to appreciate the

legal position of law which has been followed by this Court in CRR-862-2020, titled as Vishal vs. State of Haryana decided on 27.05.2020 and CRR- 962-2020 titled as Sanjiv vs. State of Haryana decided on 02.07.2020.

During the course of arguments, the respondents could neither show nor refer to any material to explain as to how, in case the petitioner is enlarged on bail, would he be exposed to moral, physical or psychological danger or would come in contact of known criminals. Mere apprehension of the prosecution without there being any material on record would not be sufficient to decline the prayer for grant of bail. It may also be noticed that in case a juvenile is found guilty and convicted, the maximum period that he can be ordered to spend in a Special Home under Section 18 (1) (f) of the Act is three years. The petitioner has spent more than one year in incarceration, therefore, no purpose would be served in detaining the petitioner any further.

As a sequel to the above discussion, the revision petition is accepted, the impugned order dated 15.01.2021 passed by the Principal Magistrate, Juvenile Justice Board, Rohtak as well as order dated 02.02.2021 passed by the Additional Sessions Judge, Rohtak are hereby set aside.

Without adverting to the merits of the case at this stage, the petitioner is ordered to be released on bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Chief Judicial Magistrate/Judicial Magistrate concerned.”

(11) A Coordinate Bench of this Court in case titled as *Sanjit versus State of Haryana*, in CRR-962-2020 decided on 02.07.2020 has observed as under:-

“A bare reading of the provision reproduced herein would make it apparent that an exception has been carved out for declining the bail to the juvenile who is in conflict with law i.e. he or she is likely to come in association with any known criminal or upon release on bail would expose such juvenile to moral, physical or psychological danger or that release of the juvenile would defeat the ends of justice.

For invoking such exception, there has to be some material before the competent authority on the basis of which it can be held that the release of the juvenile in the present case would fall within the exception recognized under Section 12 of the Act. The impugned order dated 13.5.2020 passed by the Appellate Court at Annexure P-1 is completely bereft of any such reasoning. No such material/evidence has been adverted to in the order. Seriousness of the offence as mentioned in the FIR would not be a ground to deny to the juvenile the concession of bail in the light of Section 12 of the Act.”

(12) Perusal of the above-said judgment would show that in an application under Section 12 of the Act, bail is the rule and only in case the appellant is covered under any one of the exceptions, as mentioned in Section 12 of the Act, bail application can be rejected.

(13) In the present case, from a perusal of the Social Investigation Report for child in conflict with law, which has been annexed as Annexure R2 along with the reply filed by the UT, it is clear that the case of the petitioner does not fall under any of the exceptions which have been mentioned in Section 12 inasmuch as there is no observation in the report to the effect that the petitioner would come into association with any known criminal or would expose the said person to moral, physical or psychological danger or the petitioner's release would defeat the ends of justice, rather, a perusal of the report would show that the petitioner has already passed class 11th and is desirous of joining 12th class and his attitude is friendly and a perusal of the order dated 28.09.2022 would show that in paragraph 6, it has been observed that the petitioner was a juvenile at the time of the incident and is a meritorious student and the intent of the Board was to keep him in custody for “some time”. A period of more than 2 months has elapsed after the passing of the order dated 28.09.2022. Even on merits, the petitioner has arguable points inasmuch as the petitioner was not named in the FIR and he had been sought to be implicated on the basis of a disclosure statement, in pursuance of which, three mobile phones were recovered but even as per the prosecution case, although 197 complaints were received all over the country with respect to a sextortionist racket but none of the people who had complained had referred to the mobile numbers which can be related to the mobile phones which have been recovered from the petitioner. The petitioner is a resident of State of Haryana whereas the other 15 accused are

residents of Rajasthan. The petitioner is in custody since 20.08.2022 and the investigation is complete and the challan has been presented and out of 20 prosecution witnesses, none have been examined as yet and thus, the conclusion of trial is likely to take time and the petitioner is not involved in any other case.

(14) Keeping in view the above-said facts and circumstances, the present Criminal Revision is allowed and impugned order dated 28.09.2022 passed by PMJJB, Chandigarh and order dated 15.10.2022 passed by the Additional Sessions Judge, Chandigarh are set aside and the petitioner is ordered to be released on bail subject to his furnishing bail/surety bonds to the satisfaction of the concerned trial Court/Duty Magistrate/Illaq Magistrate and subject to him not being required in any other case.

(15) However, nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial Court would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present revision petition.

(16) All the pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid judgment.

Ankit Grewal