

Before Suvir Sehgal, J.

SAGAR—Petitioner

versus

STATE OF HARYANA—Respondent

CRR No.433 of 2020

June 09, 2020

Juvenile Justice (Care and Protection of Children) Act, 2015—S.12—Gravity of offence not to be considered while deciding bail application of child in conflict with law—Petitioner alleged to have murdered the son of complainant—Bail Application filed after undergoing custody of around one year declined by Magistrate—Appeal of said order dismissed by ADJ—Revision preferred contending child in conflict with law is entitled to be released on bail as a matter of right—Held, bail to a child in conflict with law is the rule except in three contingencies specified in S.12(1)—Gravity of offence is not to be taken into consideration for denying concession of bail—Revision allowed.

Held, that the Hon'ble Supreme Court by its order dated 10.02.2020 in Re Exploitation of Children in Orphanages in The State of Tamil Nadu versus Union of India and others 2020 (1) RCR (Criminal)1022 observed as under:-

6. Once a child is produced before a JJB, bail is the rule. Section 12 of the Act reads as follows:-

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 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.

7. Sub-section (1) makes it absolutely clear that a child alleged to be in conflict with law should 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. The only embargo created is that in case the release of the child is likely bring him into association with known criminals or expose the child to moral, physical or psychological danger or where the release of the child would defeat the ends of justice, then bail can be denied for reasons to be recorded in writing. Even if bail is not granted, the child cannot be kept in jail or police lockup and has to be kept in an observation home or place of safety.

(Para 7)

Further held, that Hon'ble Supreme Court has held that bail to a child alleged to be in conflict with law is the rule.

(Para 8)

Further held, that a child alleged to be in conflict with law should be released on bail notwithstanding anything contained in the Code of Criminal Procedure or any other law for the time being in

force, except in the three contingencies specified in Section 12(1) viz. (i) if there appears to be a reasonable ground for believing that the release of the juvenile is likely to bring him into association with any known criminal (ii) the release will expose the juvenile to moral, physical or psychological danger and (iii) his release would defeat the ends of justice. Insofar as the gravity of offence is concerned, it is not to be taken into consideration for denying the concession of bail to such a child.

(Para 9)

Further held, that the Courts below have failed to give any reason or mention any of the exceptions carved out in Section 12(1) of the Act to deny bail to the petitioner. No material has been placed on the record nor any such material could be referred to during the course of arguments to show that if enlarged on bail, the petitioner would be exposed to moral, physical or psychological danger or would come in contact with known criminals. Mere apprehension of the prosecution without any material would not be a sufficient ground to decline bail to the petitioner. As per the custody certificate, the petitioner has already spent more than 1 year and 3 months in incarceration. No useful purpose would be served in detaining him any further.

(Para 11)

Sanjiv Gupta, Advocate, *for the petitioner*.

Munish Sharma, A.A.G., Haryana, *for the respondent*.

SUVIR SEHGAL J.

(1) Having been declined the concession of bail under Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for brevity “the Act”) vide impugned order dated 18.11.2019 passed by the Principal Magistrate Juvenile Justice Board, Sonipat and order dated 31.01.2020 passed by the Additional District Judge, Sonipat whereby appeal filed by the petitioner was dismissed, the petitioner has approached this Court by way of the instant revision petition assailing the said orders.

(2) In a nutshell, the facts are that FIR No.78 dated 20.02.2019 was lodged on the statement of Dharamvir son of Zile Singh. It was alleged that about 15 days back his son Sagar was having a dispute with XXX (name withheld), child in conflict with law, in which the matter was compromised but XXX still had a grudge against his son and threatened him. On 20.02.2019, it is alleged that the complainant,

his nephew and son Sagar were going from Rathdhana from Sonipat on their motorcycle. At about 1:00 p.m. when they reached near the quarters of Bandepur Irrigation Department, XXX and another boy were standing and both of them forcibly stopped Sagar. They attacked Sagar with a knife with an intention to kill him and after attacking him, they ran away even though the complainant tried to catch them. The petitioner was arrested on 20.02.2019 and he is in custody since then.

(3) Counsel for the petitioner has urged that the date of birth of the petitioner is 16.10.2001 and he was a child in conflict with law on the date of the alleged incident. He has to be tried under the provisions of the Act and in terms of Section 12 of the Act, he is entitled to be released on bail as a matter of right. His contention is that there is no direct evidence against the petitioner and the petitioner is not even remotely connected with the crime. He has argued that the courts below have failed to record any finding as required under Section 12, *ibid*.

(4) Counsel appearing for the State has opposed the petition and has argued that the petitioner is involved in the murder, an offence which by its very nature is grave. He submits that the petitioner has criminal tendencies. He further points out that the petitioner has been specifically named in the FIR. He has filed copy of custody certificate dated 31.05.2020, which is taken on record.

(5) I have considered the rival submissions.

(6) There is no dispute about the fact that the petitioner was born on 16.10.2001. As such, the petitioner was below the age of 18 years on the date of the alleged incident. His bail application had been filed and was required to be dealt with in terms of Section 12 of the Act.

(7) The Hon'ble Supreme Court by its order dated 10.02.2020 in *Re Exploitation of Children in Orphanages in The State of Tamilnadu* versus *Union of India and others*¹ observed as under:-

6. Once a child is produced before a JJB, bail is the rule. Section 12 of the Act reads as follows:-

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

¹ 2020 (1) RCR (Cr.)1022

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 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.

7. Sub-section (1) makes it absolutely clear that a child alleged to be in conflict with law should 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. The only embargo created is that in case the release of the child is likely bring him into association with known criminals or expose the child to moral, physical or psychological danger or where the release of the child would defeat the ends of justice, then bail can be denied for

reasons to be recorded in writing. Even if bail is not granted, the child cannot be kept in jail or police lockup and has to be kept in an observation home or place of safety.

(8) Hon'ble Supreme Court has held that bail to a child alleged to be in conflict with law is the rule.

(9) A child alleged to be in conflict with law should be released on bail notwithstanding anything contained in the Code of Criminal Procedure or any other law for the time being in force, except in the three contingencies specified in Section 12(1) viz. (i) if there appears to be a reasonable ground for believing that the release of the juvenile is likely to bring him into association with any known criminal (ii) the release will expose the juvenile to moral, physical or psychological danger and (iii) his release would defeat the ends of justice. Insofar as the gravity of offence is concerned, it is not to be taken into consideration for denying the concession of bail to such a child.

(10) This view finds support from the judgments passed by this Court in:-

1. *Neha* versus *State of Punjab*²
2. *Bittu* versus *State of Haryana*³
3. *Atul Kumar and another* versus *State of Haryana*⁴.
4. *Jabbar* versus *State of Haryana*, CRR 4354 of 2016, decided on 14.12.2016.

(11) The courts below have failed to give any reason or mention any of the exceptions carved out in Section 12(1) of the Act to deny bail to the petitioner. No material has been placed on the record nor any such material could be referred to during the course of arguments to show that if enlarged on bail, the petitioner would be exposed to moral, physical or psychological danger or would come in contact with known criminals. Mere apprehension of the prosecution without any material would not be a sufficient ground to decline bail to the petitioner. As per the custody certificate, the petitioner has already spent more than 1 year and 3 months in incarceration. No useful purpose would be served in detaining him any further.

² 2018(2)R.C.R. (CrI.) 226

³ 2015(2) R.C.R.(CrI.)316

⁴ 2003(4) R.C.R. (CrI.) 404

(12) Consequently, the revision petition is accepted and the impugned order dated 18.11.2019 passed by the Principal Magistrate, Juvenile Justice Board, Sonipat and order dated 31.01.2020 passed by the Additional Sessions Judge, Sonipat are hereby set-aside. Without advertent to the merits of the case, at this stage, the petitioner is ordered to be released on bail subject to furnishing adequate bail/surety bonds by his natural guardian or near relative to the satisfaction of the learned Principal Magistrate, Juvenile Justice Board, Sonipat.

(13) The parents of the petitioner shall regularly monitor his movement and ensure that the petitioner does not come in association with any known criminals and does not indulge in any other offence.

(14) It is clarified that any observation made hereinabove, shall not be construed as an expression on the merits of the case.

Sumati Jund