

Before Vikas Bahl, J.

ANKIT—Petitioners

versus

STATE OF HARYANA—Respondent

CRR No. 1151 of 2021

October 08, 2021

Juvenile Justice Care and Protection of Children’s Act, 2015—S.12—Juvenile not named in FIR for offence under Section 302 IPC—Named by co-accused—Impugned orders rejecting bail—Without referring social background report—Bail allowed

Held that, in both the impugned orders, no reference has been made to the social background report and without even referring to the said report, the Courts below, only on the basis of surmises and conjectures, observed that it could be dangerous to release the petitioner on bail. The said observations would not make the case fall within the exceptions as stipulated under Section 12 of the Act.

(Para 11)

Rohit Mittal, Advocate, *for the petitioner.*

Manish Dadwal, A.A.G. Haryana.

Vijay Sangwan, Advocate, *for the complainant.*

VIKAS BAHL, J. (ORAL)

(1) Prayer in the present Criminal Revision is for setting aside order dated 07.09.2020 passed by the Principal Magistrate, Juvenile Justice Board, Narnaul (hereinafter referred to as “the Board”) *vide* which, the regular bail application filed by the petitioner in case bearing FIR No.100 dated 26.02.2020 registered under Section 302 read with Section 34 IPC, at Police Station Mohindergarh, has been dismissed and for setting aside Order dated 7.10.2020 passed by the Additional Sessions Judge, Narnaul, which has also been dismissed.

(2) The case of the prosecution in brief is that the nephew of the complainant was murdered by unknown persons. Thereafter, one Sanjeev was arrested and as per the allegation, the said Sanjeev had given injury by brick to the nephew of the complainant namely, Krishan, who died on account of the said injury. The aforesaid Sanjeev

in his disclosure statement stated that the present petitioner was present on the date of incident. The petitioner has been in custody since 29.2.2020 and the challan in the case has been presented on 7.9.2020 and the charges have been framed on 27.1.2021. There are as many as 27 witnesses out of which none has been examined.

(3) Learned counsel for the petitioner has submitted that the petitioner was not named in the FIR and the petitioner is sought to be roped in only on the basis of the disclosure statement made by the co-accused namely, Sanjeev and that there was no recovery from the petitioner. It is further submitted that even as per the prosecution version, no overt act has been attributed to the petitioner and the alleged injury with the brick has been given by the co-accused namely, Sanjeev. It is further submitted that as per the FSL report, the alleged brick which has been recovered does not contain any blood stains. It is further submitted that the Board as well as the Court have not considered the provisions of Section 12 of the Juvenile Justice Care and Protection of the Children Act, 2015 (hereinafter referred to as “the Act”) and dismissed the application as well as the appeal filed by the petitioner on the basis of surmises and conjectures. Further, it has been argued that the petitioner is not involved in any other case. The petitioner has already undergone more than 1 year 7 months and 8 days out of the total sentence awarded. Thus, the learned counsel for the petitioner has prayed that the present petition be allowed and the petitioner be released on bail.

(4) It is has been further argued by the learned counsel for the petitioner that a perusal of the impugned order would show that no social background report has been referred to or relied upon in the impugned orders which have been passed only on the basis of surmises and conjectures. Reliance has also been placed by the learned counsel for the petitioner on three judgments of this Court in CRR-2201- 2019 decided on 22.09.2020 titled as *Prabhkirat Singh @ Paras* versus *State of Punjab*; CRR-1019-2020 decided on 25.03.2021 titled as *Gurkirat @ Gora* versus *State of Haryana* and CRR-233-2021 decided on 02.06.2021 titled as *Vishnu* versus *State of Haryana*. Thus, in light of the arguments raised and judgements relied upon, it has been prayed that the impugned orders be set aside and the petitioner be released on regular bail.

(5) Per contra learned counsel for the State as well as the learned counsel for the complainant have submitted that the orders passed by the Board/Court below are detailed and that they have taken

into consideration all aspects of the matter and thus, the present revision petition deserves to be dismissed. It has further been stated that, in the present case, a heinous crime has been committed by the petitioner and thus, he does not deserve the concession of bail. It is also submitted by the learned State counsel, on instructions from ASI Sushil Kumar, that the motorcycle as well as four brick pieces have been recovered from the petitioner.

(6) This Court has heard the learned counsel for the parties and perused the record and is of the opinion that the present criminal revision petition deserves to be allowed and the petitioner deserves to be released on bail.

(7) It is not in dispute that the petitioner has not been named in the FIR. No overt act has been attributed to the petitioner. Further, in the present case the alleged injury caused has been attributed to Sanjeev and the same is with the brick and as per the version of the learned counsel for the petitioner and even as per the FSL report, there is no blood stain on the brick. The petitioner has been involved only on the basis of the disclosure statement made by the co-accused Sanjeev. The petitioner has been in custody since 29.02.2020 and the challan in the case has been presented on 7.9.2020 and the charges have been framed on 27.1.2021. There are as many as 27 witnesses out of which, none have been examined. Thus, the trial is likely to take substantial time to conclude. It is further apparent that in the present case, the petitioner is a juvenile and his bail application is governed by the provisions of Section 12 of the Act. Section 12 of the Act is reproduced hereinbelow:-

“12. (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.

x x x x x x x x x”

(8) Before proceeding further, it would be apt to make a reference of the judgments which have been relied upon by the learned counsel for the petitioner. The relevant portion of judgment passed in CRR-1019-2020 passed in ***Gurkirat @ Gora versus State of Haryana*** is reproduced hereinbelow:-

“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 way-laid 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.

X X X X X X X X X

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.

X X X X X X X X X

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.

X X X X X X X X X

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 on the 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 *Vishnu’s case* (*supra*) also, wherein the allegation was that the petitioner therein had inflicted the injury on the head of the deceased and a blood-stained 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 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.

X X X X X X X X X

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.

X X X X X X X X X

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.

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(11) In the present case, in both the impugned orders, no reference has been made to the social background report and without even referring to the said report, the Courts below, only on the basis of surmises and conjectures, observed that it could be dangerous to release the petitioner on bail. The said observations would not make the case fall within the exceptions as stipulated under Section 12 of the Act. Moreover, both the Board/Court below have not even considered the following facts:

I. The petitioner has been in custody since 29.02.2020, challan in the case has been presented on 7.9.2020 and the

charges have been framed on 27.1.2021.

II. There are as many as 27 witnesses out of which, none have been examined. Thus, the trial is likely to take time to conclude.

III. No overt act has been attributed to the petitioner and in fact the petitioner was not even named in the FIR.

IV. The petitioner has been made an accused on the basis of the alleged disclosure statement made by the co-accused Sanjeev.

V. The petitioner is not involved in any other case.

(12) Accordingly, the present Criminal Revision Petition is allowed and the impugned orders dated 7.9.2020 passed by the Board as well as the order dated 7.10.2020 passed by the Additional Sessions Judge, Narnaul, 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 concerned trial Court/Duty Magistrate/Illaq Magistrate and subject to his not being required in any other case.

(13) However, nothing stated above shall be construed as an expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case.

(14) Since the main petition has been decided, the pending miscellaneous application, if any, also stands disposed of.

Tejinderbir Singh