

Hardeep Singh @ Dipi vs State Of Punjab on 29 April, 2021

Equivalent citations: AIRONLINE 2021 P AND H 503

CRR-1296-2020 (O&M)

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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRR-1296-2020 (O&M) Date of Decision: 29.04.2021 **** Hardeep Singh @ Dipi Petitioner Versus State of Punjab Respondent CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA Present: Mr. B.K.Mehta, Advocate, for the petitioner.

Mr. P.S. Walia, A.A.G., Punjab for the respondent-State.

SUDIP AHLUWALIA, J In this petition, the petitioner has prayed for setting aside of the impugned orders dated 09.07.2020 passed by the Principal Magistrate, Juvenile Justice Board, SBS Nagar vide which bail application moved by petitioner was dismissed in case FIR No. 21 dated 22.03.2020 under Sections 302 & 397 IPC, registered at Police Station Sadar Nawanshahr, and the judgment dated 31.07.2020 passed by Addl. Sessions Judge, SBS Nagar in a revision petition while upholding the order passed by the Principal Magistrate, Juvenile Justice Board, SBS Nagar, and further to release the petitioner on bail in the aforesaid FIR. [2] Background of the matter is that the FIR No. 21, dated 22.03.2020 was registered under Sections 304-A, 279 IPC at PS, Sadar Nawanshahr against unknown persons on the statement of one Darbara Singh son of Dhanna Singh, resident of Balachaur, District SBS Nagar. Later on, Jagdeep Singh @ Babbu Bajwa and Harsh were arrested in case 1 of 8 CRR-1296-2020 (O&M) -2- FIR No. 47, dated 11.05.2020, under Sections 302/397 IPC, PS Rahon and in the said FIR, Jagdeep Singh @ Babbu Bajwa and Harsh suffered confessional statements admitting that they alongwith Harwinder Singh and Hardeep Singh @ Dipi have constituted a gang. They used to commit robbery by inflicting injuries. In the same way, they have also committed robbery by inflicting injuries on one Jasvir Singh. On the basis of the said disclosure statements, applicant and others were nominated in FIR No. 21, dated 22.03.2020, PS, Sadar Nawanshahr, and offences under Sections 302/397/201 IPC were added by deleting Sections 279/304-A IPC. [3] Ld. Counsel for the Petitioner has argued that his client was a juvenile on the date of the alleged occurrence (21.03.2020). His date of birth happens to be 04.02.2004. As such he was just over 16 years of age on the relevant date. He, therefore, ought to have been dealt with under Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015. According to which -

'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 case of any fit person :

Provided that such person shall not be so released if there

2 of 8 CRR-1296-2020 (O&M) -3- 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.'

[4] The Petitioner was arrested two months after the date of occurrence on 25.05.2020. His prayers for bail were nevertheless rejected by both the JJB and Addl. Sessions Judge vide the impugned orders. [5] In rejecting the Petitioner's prayer, the Ld. Addl. Sessions Judge was of the opinion that the case fell under the proviso to Section 12 (1) of the JJ Act which deals with denial of bail to a juvenile/ child in conflict with law. The relevant reasons for refusing bail to the Petitioner have been recorded in paras 17 & 18 of its impugned judgment which are set out as below -

'17. There is sufficient material on record to suggest that there is reasonable ground to believe that release of petitioner is likely to bring him into association with known criminals. Moreover, the petitioner is accused of a heinous crime like murder, he would be a source of curiosity and an object of social ridicule and comment. Therefore, his psychology is bound to be adversely affected. There is danger to physical, mental and psychological safety of the juvenile delinquent. In these circumstances, it is better to keep the petitioner in the safe confine of a protection home. Most importantly, if those who allegedly commit a heinous crime like murder were granted bail, then conscience of the society would be shocked. A crime is an act against the society. Therefore, the conscience, the sensitivity of the society would have to be kept in mind. Thus, the release of the petitioner would defeat the 3 of 8 CRR-1296-2020 (O&M) -4- ends of justice.

18. In the instant case, taking into consideration the overall facts and circumstances of the case, the serious allegations levelled against the petitioner and the observations made by learned Principal Magistrate, Juvenile Justice Board, SBS Nagar, I am of the considered opinion if the petitioner is released on bail, then it would not serve the ends of justice, hence, I do not find any merit in the instant revision, which in the considered view of this Court deserves to be dismissed.' [6] Ld. Counsel for the Petitioner from his side has placed reliance upon a decision of the Delhi High Court in A.C. Vs. State of NCT of Delhi, Bail Application No. 657 of 2019 rendered on 28.03.2019, in which it was observed inter alia -

"11. But the Additional Public Prosecutor fairly conceded that there is no provision in JJ Act, 2015 requiring a departure to be made from the general provision contained in Section 12 quoted above in the matter of release on bail of a CCL who has been referred to be tried as an adult. To put it simply, the above referred provision of Section 12 governs the field for all children in conflict with law, irrespective of the age bracket to which they belong, and notwithstanding the fact as to whether the case against them is being inquired into by the JJB or the Children's Court to which it may have been referred under Section 19(3).

12. The impugned order of the Children's Court, in above view, fails to pass the muster of Section 12 and, cannot be upheld. The relevant observations of the

Children's court in denying release on bail to the petitioner have been extracted above in extenso. Having regard to the provision contained in the main clause of sub-Section (1) of Section 12, bail is the general rule. The circumstances in which denial, by way of an exception, is to be adopted, are indicated in the proviso to the said sub-section. Pertinent to note here that the circumstances 4 of 8 CRR-1296-2020 (O&M) -5- in which such person (CCL) is not to be released on bail include the existence of reasonable ground for believing that :

- (i) the release is likely to bring the CCL into association with any known criminal;
- (ii) it would defeat the ends of justice."

[7] Relying on the above decision, another Bench of the Delhi High Court in CCL 'A' Vs. State (NCT of Delhi), Bail Application No. 2510 of 2020 decided on 19.10.2020, had observed inter alia :

- "(i) xx xx xx xx
- (ii) Section 439 Cr.P.C. has no application to the issue of

grant or denial of bail to a juvenile since, again, a juvenile is to be dealt with by a special statute, namely the JJ Act, which contains a specific provision for bail, namely section 12 of the JJ Act;

(iii) If a juvenile has been denied bail by the JJB and/or the Children's Court, it is available for the juvenile to file an application before the High Court under section 12 of the JJ Act seeking bail; and it is not necessary that the bail plea be styled as an appeal under section 101(2) of the JJ Act. The words ".....or otherwise" appearing in 8(2) are wide enough to include any bail proceeding filed before the High Court, whether directly or after having been denied relief by the JJB and/or the Children's Court; and the High Court is empowered to entertain a bail plea as a proceeding of first instance, without having to treat it as an appellate or revisional proceeding;

(iv) A bail plea filed on behalf of a juvenile must always and only be considered on the criteria and parameters set-out in section 12 of the JJ Act, and the general principles for grant of denial of bail under section 437 or section 439 Cr.P.C. have no application in such a case."

(Emphasis added) 5 of 8 CRR-1296-2020 (O&M) -6- [8] Consequently, the concerned child in conflict with law was ordered to be released on bail by the Court, which observed as under :-

"51. Most importantly, the mandate of section 12 cannot be diluted, which says that a CCL-A shall be released on bail, with or without surety, or placed under the supervision of probation officer or under the case of any fit person; and accordingly, there must be good reason not to do so and such reason must relate back to the welfare of CCL-A. In the present case this court does not find any such reasons."

[9] In the present case, however, the Ld. Addl. Sessions Judge in his impugned order while recognizing the applicability of Section 12 of the Juvenile Justice Act for a child in conflict with law was, however, of the opinion that there is reasonable ground to believe that his release is likely to bring him into association with known criminals, and that the Petitioner being accused of a heinous crime like murder, he would be a source of curiosity and an object of social ridicule and comment, on account of which his psychology is bound to be adversely affected. The Ld. Court below further went on to observe that there is danger to the physical, mental and psychological safety of the Petitioner, on account of which it is better to keep him in the safe confines of a Protection Home, and that if those who allegedly commit a heinous crime like murder were granted bail, then conscience of the society will be shocked, since a crime being an act against the society, the conscience, and the sensitivity of the society would have to be kept in mind, on account of which his release would defeat the ends of justice.

[10] In the opinion of this Court, however, the above reasonings of the Ld. Court below in denying bail to the Petitioner are not in consonance with the basic objective behind the special legislation contained in Section 6 of 8 CRR-1296-2020 (O&M) -7- 12(1) of the Juvenile Justice Act, more particularly at this stage when by now he has already remained in confinement in the Protection Home for almost a year following his arrest on 25.05.2020. [11] The first and foremost reason for denying bail to a juvenile/ child in conflict with law is the possibility of his coming into contact, or his being brought into association with any known criminal or otherwise his exposure to moral, physical or psychological danger, or where his release would defeat the ends of justice. In the opinion of this Court, neither of these conditions appear to be attracted qua the petitioner at this stage. He is alleged to have become a member of a gang along with co-accused Jagdeep Singh @ Babbu Bajwa and Harsh, who had both crossed the age of majority at the relevant time. But as intimated by Ld. Counsel for the State, on instructions, those two adults are already in custody, and so there is little chance of the Petitioner being exposed to their association if released on bail. He has by now remained in detention for almost an year. It can therefore not be said that at this stage he is likely to be exposed to any moral, physical or psychological danger or his release would defeat the ends of justice when the alleged offence was committed more than one year ago, and, as seen from the material collected by the Investigating Authorities which essentially is the disclosure statements of co-accused Jagdeep Singh @ Babbu Bajwa and Harsh, the fatal injuries on the deceased were inflicted by those very accused persons, and not by the present Petitioner himself. As such, extending the beneficial effect of Section 12 of the JJ Act to the Petitioner who has already remained in detention for so long would not appear to defeat the ends of justice.

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[12] Similarly, the fact that the Petitioner is accused of involvement

in the heinous crime of murder, in association with the other co-accused persons who were the actual assailants of the deceased and not juveniles themselves, would also not be of much consequence since there is nothing in Section 12(1) of the Juvenile Justice Act to indicate that entitlement to its beneficial provisions for a juvenile to be curtailed in any manner simply because the offence for which he is charged happens to be a 'henious' one, and there can be no gain saying that ends of justice would be defeated if such entitlement is disregarded simply because of the applicability of any henious offences in a given case when the legislation does not contemplate that such offences are to be treated at any different pedestal Section 12(1) of the Juvenile Justice Act.

[13] For the aforesaid reasons, at this stage the Petitioner is permitted to be released on bail to the satisfaction of the Ld. trial Court subject, however, to the condition that while on such bail, he shall remain under supervision of the Legal-cum-Probation Officer, District Child Protection Unit, SBS Nagar Nawanshahr, who shall maintain general oversight and supervision over him, including by visiting or calling him from time to time as may be deemed necessary, to ensure that he does not fall into any undesirable company and is not exposed to any moral, physical or psychological danger; or that his release, in any manner, defeats the ends of justice. [14] Needless to add, nothing in this judgment shall be construed as an expression on the merits of the case as a whole.

[15] Petition stands disposed off.

29.04.2021

Satyawan

1. Whether speaking/reasoned: Yes

2. Whether reportable: Yes

(SUDIPAHLUWALIA)

JUDGE