

2025:PHHC:074048



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

CRR-762-2024 (O&M)

Date of Decision: 28.05.2025

Shamsher Singh

...Petitioner

Versus

State of Punjab

... Respondent

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

Present : Mr. Amit Arora, Advocate
for the petitioner.

Mr. M.S. Bajwa, DAG, Punjab.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the present revision petition under Section 102 of the Juvenile Justice (Care and Protection of Children) Act, 2015, against the impugned judgment dated 19.12.2023 passed by the Court of Additional Sessions Judge, Amritsar, whereby, the appellate Court had rejected the prayer of the petitioner for releasing him on bail in a case arising out of FIR No. 11 dated 03.02.2023 registered under Sections 304/379-B(2) IPC, Police Station Gharinda, District Amritsar.

2. The FIR in the present case was registered on the basis of the statement made by Atul Kumar and the same has been reproduced below:-

“Statement of Atul Kumar son of Yaad Ram resident of House No.71 MSG Phase-2 Jawaharpuram Colony Agra UP aged about 28 years Mobile No.7906458384. It is stated that I am resident of above-mentioned address and I am working as Team Leader in Jain Pack Private Limited at Noida Stellar Building. That I along with one of my friend Ganga Mahia daughter of Dhandhan Bahadur Suba R/o Gangtok Sikkim have gone to visit Attari Border at Amritsar today and at about 5:15/5:45 PM I and my friend Ganga Mahia started back to come to Amritsar in one auto in which the other passengers also sat from Wagah Border in the auto and after about 4/5 minutes of travel from the backside one motorcycle having two persons who were having muffled faces came and snatched the bag from the hands of my friend Ganga Mahia and during the scuffle my friend Ganga Mahia fell down from the moving auto facing downward because of which reason she received lot of injuries. Thereafter, I with the help of other passersby took my friend Ganga to nearby hospital but doctor due to the serious injuries referred her to ASR Amandeep Hospital. Thereafter, I in the ambulance of the hospital brought my friend Ganga for treatment to the hospital but the doctor declared my friend as dead. That two unidentified persons snatched the bag from the hands of my friend Ganga Mahia in the moving auto and because of which reason my friend Ganga fell down from the auto and got

injured and expired, thus, the strict legal action may kindly be taken against them. I have read over my statement which is admitted to be true. Sd./-Atul Kumar”.

3. Learned counsel for the petitioner contends that the petitioner was not initially named in the FIR nor any physical description of any accused was mentioned therein. In fact, the petitioner has been nominated as an accused in the present case on the basis of some secret information. He next contends that the petitioner was arrested on 03.03.2023 and a mobile phone was planted on him. He further contends that the date of birth of the petitioner is 24.02.2006 and on the date of occurrence, he was aged about 16 years and 11 months. Thus, as per the provisions of the Act, he was a “child in conflict with law” on the date of occurrence. After his arrest, the investigation has been completed and the final report under Section 173 Cr.P.C. has been presented before the competent Court of law. He further contends that the Juvenile Justice Board as well as the appellate Court had misconstrued the provisions of Section 12 of the Act and the impugned order is liable to be set-aside by this Court.

4. On the other hand, learned State counsel has vehemently opposed the prayer made by the learned counsel for the petitioner on the ground that he was the main accused and he alongwith his co-accused had caused the death of the victim in the present case. Thus, he does not deserve the concession of bail.

5. I have heard learned counsel for the parties and with the able assistance of the respective counsels, I have perused the material against the present petitioner.

6. Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015, provides for the provisions to grant of bail to a child, who is in conflict with law and the same has been reproduced below:-

“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 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. 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".

7. In the present case, it appears that both the Courts had rejected the application, without adverting to the statutory mandate of Section 12 of the Act. Even, the petitioner is continuing in custody for the last more than 02 years and 02 months and his continuation in custody may bring him in association with known criminals and his

right to speedy under Article 21 of the Constitution of India is also violated.

8. In view of the above discussion, the present revision 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.

9. 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.

10. The above observations have been made, only for the limited purpose of disposal of the present revision petition 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.

28.05.2025
amit rana

(N.S.SHEKHAWAT)
JUDGE

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