



CRA-S-4235-2024

-1-

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

CRA-S-4235-2024

Date of decision: 18th March, 2025

N Kumar

...Appellant

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Jaswinder Singh Grewal, Advocate for the petitioner.

Ms. Swati Batra, Deputy Advocate General, Punjab.

MANISHA BATRA, J (ORAL):-

This appeal has been filed under Section 101(4) of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short, '*the Act, 2015*') thereby challenging the order dated 12.02.2024 passed by Children Court/Court of learned Sessions Judge, Rupnagar in case arising out of FIR No. 197 dated 08.09.2023 registered under Section 302 read with Section 34 of IPC at Police Station City Rupnagar, District Rupnagar, whereby an application for grant of bail as filed by the appellant, had been dismissed.

2. Brief facts of the case relevant for the purpose of disposal of this appeal are that the aforementioned FIR was registered on 08.09.2023, on receipt of an information about dead body of some unknown person lying near Gaushala road, Rupnagar. The dead body was identified by complainant Daksh Saini to be that of his father Dewarka Das. He also recorded a statement that the victim Dwarka Das was working at DCM cloth

**CRA-S-4235-2024****-2-**

house. He used to come back home at about 09:00 PM from his work place. On the night of 07.09.2023, he did not return home. His mobile phone was also going switched off and then in the next morning, his dead body was found lying at the spot. He also informed that the mobile phone, wallet and motorcycle of his father were found missing.

3. After registration of FIR, usual formalities of investigation were conducted. Harmail Singh, brother of the victim recorded his statement that prior to the death of the victim, he had seen him going along with accused Sunil Kumar. The accused Sunil Kumar was arrested on 11.09.2023. He was interrogated and suffered disclosure statement admitting his complicity in the offence of murder of the victim and also about the involvement of the appellant who is his nephew and his own son Shivam Kumar. The appellant and co-accused Shivam Kumar were also nominated as such. The accused Shivam Kumar was arrested on 12.09.2023. He suffered disclosure statement and got recovered his blood stained clothing and mobile phone. The appellant, who is a child in conflict with law, was taken into protective custody on 12.09.2023. He too suffered a disclosure statement and in pursuance thereof, got recovered a blood stained *datar* used for commission of murder of the victim along with his blood stained clothing, which were taken into possession by the police. Offence under Section 201 of IPC was added. Investigation stands completed and challan against the appellant was presented before the Juvenile Justice Board (for short 'JJ Board').

4. As revealed from the record, vide order dated 11.01.2024, the learned Principal Magistrate, JJ Board, observed that there was need for trial



of the appellant as an adult and the case was ordered to be sent to the Jurisdictional Children Court for trial of the appellant as such.

5. The appellant moved application for grant of regular bail which was dismissed by the Court of Sessions Judge, by passing the impugned order dated 12.02.2024.

6. Vide order dated 20.12.2024, the appellant was extended benefit of interim bail by this Court.

7. It is argued by learned counsel for the appellant that the impugned order dated 12.02.2024 is not sustainable in the eyes of law as while passing the same, the learned Children Court did not apply its judicious mind. The fact that there was no direct evidence about the involvement of the appellant in commission of offence of murder of the victim, had not been taken into consideration. No motive whatsoever has been attributed to the appellant for causing homicidal death of the victim. He has been involved in this case only on the basis of disclosure statement of the co-accused which cannot be considered to be legally admissible in evidence. There is no eye-witness to the occurrence. The CCTV camera footage as contained in a DVR has been relied upon by the police for connecting him with the subject offences, which does not show the appellant while committing any specific overt act and hence is not reliable.

8. It is further argued that the learned Children Court, while rejecting the application of the appellant, ignored the well settled proposition of law that the provisions of Section 12 of the Act, 2015 are mandatory in nature and the same were fully applicable to the present case. It is submitted



that Section 12 of the Act, 2015 contemplates release of a juvenile on bail notwithstanding anything contained in the provisions of Cr.P.C. and simply because of the fact that the appellant had been ordered to be tried as an adult, his claim for release on bail could not be declined, as nonetheless, he is to be considered as a child in conflict with law.

9. On the other hand, it has been argued by learned Deputy Advocate General, Punjab that there is no illegality or infirmity in the impugned order. The allegations against the appellant are quite serious in nature. His participation in commission of offence of murder of the victim had been established not only on the basis of disclosure statement of the co-accused but also from the CCTV footage of the camera installed in the vicinity and contained in the DVR, which had been taken into possession by the police and which revealed the appellant while going on a motor bike along with the co-accused Shivam while following the motor bike of the victim on which the accused Sunil was a pillion rider.

10. It is further argued by learned Deputy Advocate General, Punjab that the victim was lastly seen along with the appellant and the co-accused. The appellant suffered disclosure statement and got recovered the weapon of offence in pursuance thereof. The victim was killed in a brutal manner. The learned Children Court had rightly declined the prayer made by the appellant for release on bail by observing that there are chances of his mingling with anti social and criminal elements in society and his misuse by them, if the appellant was given benefit of bail. It is argued that keeping in view the manner, in which the offences were committed by the appellant



along with the co-accused and the heinous nature of crime, his release would be certainly defeat ends of justice. Accordingly, it is urged that the impugned order does not warrant any interference and the appeal is liable to the dismissed.

11. Rival contentions of both sides have been heard at considerable length.

12. Undisputedly, the appellant was 17 years and 11 months old at the time of occurrence and was therefore, a juvenile in conflict with law. Section 12 of the Act, 2015, postulates a rule for grant of bail for every child in conflict with law, who is alleged to have committed a bailable or non-bailable offence, if he/she is apprehended or detained by the police or being produced before the Court. From a bare reading of provisions of Section 12 of the Act, 2015, it appears that the intention of the legislature was to grant bail to a child in conflict with law irrespective of the nature or gravity of the offence alleged to have been committed by him and the same can be declined only in cases, where reasonable grounds are there for believing that the release is likely to bring him into association with any known criminal or expose him to moral physical or psychological danger or that his release would defeat the ends of justice. In the instant case, the learned Children Court observed that there were chances of appellant's mingling with anti-social and criminal elements in society and his misuse by them. It is well settled that the expression 'known criminal' is not without significance and before the exception of Section 12 is invoked, the prosecution must identify the 'known criminal. In *Nand Kishore (in JC) v. State (2006) 4 RCR (Cri.)*



754, while considering the first condition of proviso of Section 12 of the Act, 2015, it was observed by Delhi High Court that the Court must have reasonable grounds to believe that juvenile if released, he would associate with a known criminal and the prosecution must identify such known criminal, since it cannot be generally observed that the release of the juvenile would bring him into association with criminals without identifying the criminals and without returning a *prima facie* finding with regard to the nexus between the juvenile and such criminals. In the instant case, the learned Children Court did not make any discussion on the point, as to whether, there was any identification about the 'known criminal(s)'. In the opinion of this Court, the existence of the ground that the appellant could come into association with any known criminal, could not be mere guess work by the Court concerned and some material must have been there on record to show so, which is not reflected from the order of learned trial Court.

13. The remaining two grounds/provisos for believing that the appellant should not be released are, however, that he could be exposed to some moral physical or psychological danger and his release would defeat ends of justice. It is also well settled that 'the reasonable grounds', for believing that release of a child in conflict with law would expose him to moral, physical or psychological danger or would defeat the ends of justice, should also be based upon some material/evidence available on record and there must be objective assessment of such reasonable grounds. It is also relevant to mention here that the Juvenile Justice Act is undoubtedly a



beneficial legislation intended for reform of the child in conflict with law. However, it is also to be taken into consideration that justice should be done not only to the accused but also to the accuser/victim. The High Court of Allahabad in *Magnesh Rajbhar Vs. State of U.P. and another 2018(2) ACR 1941*, observed the aspect of gravity of an offence cannot be considered to be totally irrelevant to the issue of grant or refusal of bail to a minor. It was observed that Section 12 of Act, 2015, nowhere ordains that bail to a juvenile is a must in all cases as it can be denied for the same reasons as given in proviso of this Section. It was observed that the Act, 2015 has a solemn purpose to achieve betterment of juvenile offenders, but it is not a shelter home for those juvenile offenders who have got criminal proclivities and a criminal psychology. It has a reformatory approach but does not completely shun retributive theory. The legislature has preserved larger interest of society even in cases of bail to a juvenile. It was observed that the Act seeks to achieve moral, physical and psychological betterment of juvenile offender and if it is found that the ends of justice would be defeated or that goal desired by the legislature can be achieved by detaining a juvenile offender in a juvenile home, bail can be denied to him. Reliance in this case was also placed upon *Om Parkash Vs. State of Rajasthan (2012) 5 SCC 201*, wherein it was observed by Hon'ble Apex Court that in matters relating to juveniles, where the offences are heinous like rape, murder and gang rape etc. nature and gravity of the offence would be relevant and the minor cannot get away by shielding himself behind veil of minority.

14. The phrase 'ends of justice' is undoubtedly a meaningful phrase



and the Courts while considering the question that release of a child in conflict with law would defeat the ends of justice or not, is certainly under an obligation to address concerns of both the victim as well as the accused and strike a delicate balance between the competing and conflicting questions demanding justice. The term 'defeating the ends of justice' has been introduced by the legislature with a view to caution the courts to exercise restraint and to overcome an otherwise absolute right to bail to a juvenile, where in the totality of the circumstances, his release would adversely impact the law and order.

15. Now coming to the peculiar facts and circumstances of the present case. As per the allegations, the accused Sunil who was working at the same place along with the victim, had motive to eliminate the victim and by joining the appellant and the co-accused Shivam i.e. his son, and in furtherance of their common intention, on the fateful day, he took the victim along with him on a motor bike whereas, the appellant and co-accused Shivam followed him. All of them committed murder of the victim. The appellant had given *datar* blows to the victim and was an active participant in the occurrence. As per post-mortem report as many as 20 injuries, had been sustained by the victim, which were ante-mortem in nature and were sufficient to cause death in the ordinary course of nature. The CCTV footage of the camera collected during investigation also shows that he was following the victim and the co-accused Sunil on a separate bike with co-accused Shivam Kumar. From a perusal of the order dated 11.01.2024 as passed by the learned Principal Magistrate, JJ Board, it is revealed that the



preliminary assessment of the appellant was done after getting him examined with the help of a psycho social worker and it was opined that he was a sufficiently mature person having knowledge that the wrong act committed by him constituted offence punishable by law. Though neither any social background report is shown to have been prepared, nor it has been revealed that the psycho social worker had given any opinion that the relevance of the appellant is likely to be associated with known criminal or exposed to any moral, physical or psychological danger, however, in my opinion, the nature of the crime including other merits of the case are of ample significance for the Court while forming an opinion about the ends of justice. He was at the verge of reaching age of adulthood. The manner in which the crime was committed and the nature thereof, impels this Court to draw a conclusion that if released on bail, he would certainly fall in same hands and environment which most probably contributed towards his criminal bent of mind and further on taking into consideration the manner, in which the crime was committed, the role played by the appellants, its impact on the family of the victim as well as society at large, this Court is of the considered opinion that the release of the appellant would certainly lead to defeat of ends of justice. As such, the view as taken by the learned Appellate Court cannot be stated to be a view warranting any inference by this Court. For the reasons recorded above, this Court is of the opinion that it is not a fit case to grant bail to the appellant. Accordingly, the appeal is dismissed. The appellant is on interim bail and is directed to surrender by appearing before the concerned Court within a period of one month.



CRA-S-4235-2024

-10-

16. A certified copy of this order be transmitted to the Court concerned for the necessary compliance.

**[MANISHA BATRA]
JUDGE**

18th March, 2025

Parveen Sharma

1. *Whether speaking/ reasoned*

: *Yes / No*

2. *Whether reportable*

: *Yes / No*