

CRR-1032-2021 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-1032-2021(O&M)

Decided on: 30.07.2025

Sunil @ Kaku @ Kiriya

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. R.S. Mamli, Advocate
for the petitioner.

Ms. Shaveta Sanghi, DAG, Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
614	30.12.2020	City Fatehabad, District Fatehabad	302 IPC and 25 of Arms Act

1. The petitioner, who is a child conflict with law incarcerated in the FIR captioned above had come up before this Court under Section 401 CrPC, seeking regular bail through his natural guardian/mother by setting aside the order dated 27.08.2021 passed by the Additional Sessions Judge, Fatehabad.

2. Per paragraph 20 of the bail petition, the petitioner has clean antecedents.

3. The facts and allegations are being taken from the order dated 27.08.2021 passed by the Additional Sessions Judge, Fatehabad, which reads as follows:

“Brief facts for the disposal of the instant bail application, as per police reply, are that the present case has been registered on 30.12.2020, on the basis of statement of complainant Rahul son of Rakesh Kumar, who, inter alia, alleged that they are three brothers and sister. He is elder; Chhota @ Krishan @ Kaku is younger to him and sister Suman is younger to them. They both the brothers are married. His brother Krishan @Kaku was working as a labourer at shop No. 50-B, Anaj Mandi, Fatehabad. Accused Sunil @ Kiriya son of Ram Chander is a drugs addicted. His brother Krishan asked said accused Sunil @ Kiriya not to visit in their locality but he did not mend his ways and he said that he would come in the locality and he cannot do anything. On that day, at about 3.00/3.30 P.M., when his brother Krishan @ Kaku came from his work and was present near Vikram Dairy, then accused Sunil @ Kiriya met him and said Sunil @

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Kiriya quarrelled with his brother Krishan (@Kaku, Rajbir son of Ram Naresh also came at the spot on hearing noise. When, he and said Rajbir were trying to rescue Krisgab @ Kaku from said accused Sunil Kiriya, then said accused Sunil @ Kiriya gave a stab blow in the abdomen of his brother Krishan and fled away from the spot. Thereafter, his brother Krishan fell down on the ground and he was got admitted in Government Hospital, Fatehabad, where his brother succumbed to the injuries sustained by him. Postmortem examination on the dead body of the deceased was conducted. During the course of investigation on 02.01.2021, present petitioner Sunil @ Kiriya was arrested and he was joined in the investigation of the present case in the presence of his mother Smt. Manju, who on interrogation, suffered his disclosure-statement. Recovery of the knife allegedly used by the petitioner in the commission of the offence in the present case was got recovered. Section 25 of Arms Act was added in the present case. After completion of investigation challan against the petitioner has been presented before the Juvenile Justice Board, Fatehabad on 28.01.2021.”

4. Petitioner’s counsel submits that petitioner’s custody in this case is exceeding four years, as per affidavit filed in this regard through CRM-12230-2025 and therefore State could not rebut such custody. The petitioner's counsel further prays for bail and states that separation from parents and detention in protective care would cause an irreversible injustice to the petitioner and his family.

5. The State’s counsel opposes the bail.

6. It shall be appropriate to refer to the following provisions of the Juvenile Justice (Care and Protection Of Children) Act, 2015:

S. 2(35) “juvenile” means a child below the age of eighteen years;

S. 2(12) “child” means a person who has not completed eighteen years of age;

S. 2(13) “child in conflict with law” means a child who is alleged or found to have committed an offence and who has not completed eighteen years of age on the date of commission of such offence;

S. 2(33) “heinous offences” includes the offences for which the minimum punishment under the Indian Penal Code (45 of 1860) or any other law for the time being in force is imprisonment for seven years or more;

S. 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

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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.

S. 15. Preliminary assessment into heinous offences by Board.—(1) In case of a heinous offence alleged to have been committed by a child, who has completed or is above the age of sixteen years, the Board shall conduct a preliminary assessment with regard to his mental and physical capacity to commit such offence, ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence, and may pass an order in accordance with the provisions of sub-section (3) of section 18:

Provided that for such an assessment, the Board may take the assistance of experienced psychologists or psycho-social workers or other experts.

Explanation.—For the purposes of this section, it is clarified that preliminary assessment is not a trial, but is to assess the capacity of such child to commit and understand the consequences of the alleged offence.

(2) Where the Board is satisfied on preliminary assessment that the matter should be disposed of by the Board, then the Board shall follow the procedure, as far as may be, for trial in summons case under the Code of Criminal Procedure, 1973 (2 of 1974):

Provided that the order of the Board to dispose of the matter shall be appealable under sub-section (2) of section 101:

Provided further that the assessment under this section shall be completed within the period specified in section 14.

S. 18. Orders regarding child found to be in conflict with law.—(1) Where a Board is satisfied on inquiry that a child irrespective of age has committed a petty offence, or a serious offence, or a child below the age of sixteen years has committed a heinous offence, [or a child above the age of sixteen years has committed a heinous offence and the Board has, after preliminary assessment under Section 15, disposed of the matter] then, notwithstanding anything contrary contained in any other law for the time being in force, and based on the nature of offence, specific need for supervision or intervention, circumstances as brought out in the social investigation report and past conduct of the child, the Board may, if it so thinks fit,—

(a) allow the child to go home after advice or admonition by following appropriate inquiry and counselling to such child and to his parents or the guardian;

(b) direct the child to participate in group counselling and similar activities;

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(c) order the child to perform community service under the supervision of an organisation or institution, or a specified person, persons or group of persons identified by the Board;

(d) order the child or parents or the guardian of the child to pay fine:

Provided that, in case the child is working, it may be ensured that the provisions of any labour law for the time being in force are not violated;

(e) direct the child to be released on probation of good conduct and placed under the care of any parent, guardian or fit person, on such parent, guardian or fit person executing a bond, with or without surety, as the Board may require, for the good behaviour and child's well-being for any period not exceeding three years;

(f) direct the child to be released on probation of good conduct and placed under the care and supervision of any fit facility for ensuring the good behaviour and child's well-being for any period not exceeding three years;

(g) direct the child to be sent to a special home, for such period, not exceeding three years, as it thinks fit, for providing reformatory services including education, skill development, counselling, behaviour modification therapy, and psychiatric support during the period of stay in the special home:

Provided that if the conduct and behaviour of the child has been such that, it would not be in the child's interest, or in the interest of other children housed in a special home, the Board may send such child to the place of safety.

(2) If an order is passed under clauses (a) to (g) of sub-section (1), the Board may, in addition pass orders to—

(i) attend school; or

(ii) attend a vocational training centre; or

(iii) attend a therapeutic centre; or

(iv) prohibit the child from visiting, frequenting or appearing at a specified place; or

(v) undergo a de-addiction programme.

(3) Where the Board after preliminary assessment under section 15 pass an order that there is a need for trial of the said child as an adult, then the Board may order transfer of the trial of the case to the Children's Court having jurisdiction to try such offences.

7. The date of occurrence was 30.12.2020 and on the date of the incident, the petitioner was below 18 years of age.

8. Per Section 12 of the Juvenile Justice Act, 2015, when any person who is apparently a child and is alleged to have committed a bailable or non-bailable offense is apprehended or detained by the police or appears or brought before a Board, such person shall, notwithstanding anything contained in the CrPC, 1973/ BNSS, 2023 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 the care of any fit person. However, as per the proviso, such a person shall not be released if there appear to be 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. Given this, the following aspects have to be considered by the Juvenile board:

- 1) The release will likely bring the child into association with any known criminal.

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- 2) Expose the child to moral, physical, or psychological danger.
- 3) The child's release would defeat the ends of justice.

9. While rejecting the bail, Ld. Additional Sessions Court relied upon the Social Investigation Report in the following terms:

“6. Heard. In the present case FIR, vide order dated 15.03.2021 passed by the Court of Ms. Meeta Kohli, learned Principal Magistrate, Juvenile Justice Board, Fatehabad, the present appellant has been ordered to be tried as an adult and his case has been committed to this Court being Children Court having jurisdiction to try such offence. Admittedly, till today said order dated 15.03.2021 passed by the learned Principal Magistrate, Juvenile Justice Board, Fatehabad has not been set-aside by any competent authority. As per prosecution, the appellant has been booked for commission of offence punishable under section 302 of IPC for committing murder of deceased Krishan Kumar. Therefore, the allegations levelled against the appellant are serious in nature. The apprehension of learned Public Prosecutor for the State carries merit that if the appellant is released on bail, he would intimidate the witnesses and may hamper the trial. Accordingly, release of the appellant on bail would defeat the ends of justice. In this view of the matter, no interference is required in well reasoned order dated 09.07.2021 passed by learned Principal Magistrate Juvenile Justice Board, Fatehabad. Consequently, the instant appeal filed by the appellant is hereby dismissed and impugned order dated 09.07.2021 passed by learned Principal Magistrate Juvenile Justice Board, Fatehabad is hereby affirmed and upheld. Papers be tagged with the main case file.”

10. Given the above, the reasons are not in terms of the statutory requirement of Section 12 of the JJ Act.

11. Undoubtedly, the most grievous injury has been attributed to the petitioner, but he was under 18 years of age at the time of the occurrence. Thus, he could have been separated from his lawful guardians only after meeting the statutory conditions of the JJ Act, which was prima facie not done.

12. Resultantly, the petitioner's custody be handed over to his parents subject to the condition that they shall be responsible for the petitioner's good behavior and shall ensure that the petitioner, who is a child in conflict with the law, does not repeat any offense. The petitioner will be released after his parents furnish a bond in these terms.

13. Consequently, the impugned order dated 27.08.2021 is set aside.

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14. There would be no need for a certified copy of this order for furnishing bonds, and any Advocate for the Petitioner can download this order along with case status from the official web page of this Court and attest it to be a true copy. If the attesting officer wants to verify the authenticity, such an officer can also verify its authenticity and may download and use the downloaded copy for attesting bonds.

15. Petition allowed in aforesaid terms. All pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

30.07.2025
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Whether speaking/reasoned: Yes
Whether reportable: No.