

Before Suvir Sehgal, J.

AXXX (JUVENILE)—*Petitioner*

versus

STATE OF HARYANA—*Respondent*

CRR No. 1005 of 2020

August 08, 2020

Juvenile Justice (Care and Protection of Children) Act, 2015, S.12—Application for grant of bail—FIR under Sections 148, 149, 302 and 120 Indian Penal Code, 1860 and S.25 Arms Act, 1959—Held, undisputedly the petitioner was less than 18 years of age on the date of alleged occurrence—Was declared a juvenile—His application for bail has to be considered under S.12 of the Act—Grant of bail to juvenile is a rule and decline of the same is an exception—He is to be released on bail notwithstanding anything contained in the Code of Criminal Procedure or any other law for the time being in force, except for the three contingencies specified in S.12 (1)—gravity of offence is not a consideration that will prevail with the Court while deciding application under S.12—Mere fact that co-accused are yet to be apprehended is no ground to deny bail—Further held, dismissal of earlier bail application under S.167 (2) Cr.P.C. for grant of default bail also would not come in the way of adjudicating the present petition—Consequently, impugned orders were set-aside and bail granted.

Held, that grant of bail to a juvenile is a rule and the decline of the same is an exception. This Court in **CRR No.808 of 2020** titled as *Sahil alias Nannu versus State of Haryana* decided on **09.06.2020**, held that a child in conflict with law should be released on bail notwithstanding anything contained in the Code of Criminal Procedure or any other law for the time being in force except for any of the three contingencies specified in proviso to Section 12(1) of the Act i.e. (i) if there appears to be a reasonable ground for believing that the release of the juvenile is likely to bring him into association with any known criminal, or (ii) the release will expose the juvenile to moral, physical or psychological danger or (iii) his release would defeat the ends of justice. Reliance can further be placed in this regard upon judgment of this Court in **CRR No.869 of 2020** titled as *Manga Mann and another versus State of Punjab*, decided on **21.05.2020**.

(Para 7)

Further held, that when the orders passed by the Juvenile Justice Board as well as the learned Sessions Judge are examined in the light of the provisions of Section 12 of the Act and the judgments mentioned above, it transpires that the Court, without there being any basis recorded the finding that the proviso to Section 12((1) of the Act can be invoked. The mere fact that some of the co-accused are yet to be apprehended is not a ground for denial of a bail to a child in conflict with law. Still further, gravity of the offence also is not a consideration which will prevail with the Court while deciding his application under Section 12 of the Act. The impugned orders, therefore, cannot be sustained and deserve to be set aside.

(Para 8)

Further held, that as noticed above, Section 12 of the Act contains a non-obstante clause, which expressly excludes the provisions of the Code of Criminal Procedure. The filing and dismissal of the application by the petitioner under Section 167(2) of the Code of Criminal Procedure for grant of default bail, would not come in his way insofar as the adjudication of the present petition is concerned.

(Para 9)

Navneet Singh Chhokar, Advocate, *for the petitioner.*

Gaganpreet Kaur, A.A.G., Haryana, for the State.

SUVIR SEHGAL J.

(1) The present revision petition has been filed by Axxx (name with held), child in conflict with law, challenging the order dated 20.04.2020 passed by the Principal Magistrate, Juvenile Justice Board, Gurugram, whereby his application for grant of bail under Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for brevity “the Act”) was declined and order dated 21.05.2020 passed by the Additional Sessions Judge, Gurugam whereby his prayer met the same fate.

(2) As per the version of the prosecution, a complaint was received from Hari Om, son of Gulab Singh to the effect that on 27.09.2019, his cousin Sanjiv was kidnapped by Johny and Mony, who were accompanying other boys, in a car and two motorcycles. It was alleged that there was some previous enmity between the said two boys and Sanjiv. Initially, FIR was registered under Section 365 read with Section 34 IPC. Subsequently, on the recovery of dead body of Sanjiv, FIR No.588 dated 29.09.2019 was converted into FIR under Sections

148/149/302/364/120-B of the Indian Penal Code, 1860 and Section 25 of the Arms Act, 1959, which was registered at Police Station Sector 10, Gurugram. On the statement made by the co-accused, the petitioner was arrested on 20.11.2019.

(3) Counsel appearing for the petitioner has submitted that the date of birth of the petitioner is 20.02.2002 and he was declared a juvenile, vide order dated 21.01.2020. His argument is that the petitioner was not involved in the offence and no role has been ascribed to him in the FIR. Mere recovery of the motorcycle at his instance does not make him an accomplice to the homicide. Counsel has argued that the petitioner was a student of Senior Secondary and his studies were disrupted as a result of his alleged involvement, which is the sole criminal case against him. He further submitted that though the challan was presented on 17.04.2020 but there are 35 prosecution witnesses and their evidence is yet to be recorded.

(4) Upon instructions from SI Susheel Kumar, counsel for the State has opposed the petition and submitted that the petitioner is involved in a heinous offence of murder. If released on bail, he is likely to come in contact with co-accused, some of whom are yet to be arrested. According to her, the petitioner in association with other co-accused had conspired to commit murder of Sanjiv, which was premeditated. As per her instructions, there are a total of 17 accused including the petitioner. Still further, she has argued that the petitioner had applied for default bail, which was rejected on 23.04.2020 and appeal filed there against was dismissed by the Sessions Court on 16.05.2020. The petitioner could not simultaneously invoke Section 12 of the Act.

(5) I have considered the rival submissions.

(6) There is no dispute about the fact that the petitioner was less than 18 years of age on the date of alleged occurrence. He was declared a juvenile and would fall within the ambit of "child in conflict with law" as laid down in Section 2(13) of the Act. His application for bail before the Principal Magistrate, Juvenile Justice Board, Gurugram and the appeal filed by him, before the Sessions Court has to be dealt with in terms of the provisions of Section 12 of the Act.

(7) Grant of bail to a juvenile is a rule and the decline of the same is an exception. This Court in **CRR No.808 of 2020 titled as Sahil alias Nannu versus State of Haryana decided on 09.06.2020**, held that a child in conflict with law should be released on bail

notwithstanding anything contained in the Code of Criminal Procedure or any other law for the time being in force except for any of the three contingencies specified in proviso to Section 12(1) of the Act i.e. (i) if there appears to be a reasonable ground for believing that the release of the juvenile is likely to bring him into association with any known criminal, or (ii) the release will expose the juvenile to moral, physical or psychological danger or (iii) his release would defeat the ends of justice. Reliance can further be placed in this regard upon judgment of this Court in **CRR No.869 of 2020 titled as *Manga Mann and another versus State of Punjab*, decided on 21.05.2020.**

(8) When the orders passed by the Juvenile Justice Board as well as the learned Sessions Judge are examined in the light of the provisions of Section 12 of the Act and the judgments mentioned above, it transpires that the Court, without there being any basis recorded the finding that the proviso to Section 12((1) of the Act can be invoked. The mere fact that some of the co-accused are yet to be apprehended is not a ground for denial of a bail to a child in conflict with law. Still further, gravity of the offence also is not a consideration which will prevail with the Court while deciding his application under Section 12 of the Act. The impugned orders, therefore, cannot be sustained and deserve to be set aside.

(9) As noticed above, Section 12 of the Act contains a non-obstante clause, which expressly excludes the provisions of the Code of Criminal Procedure. The filing and dismissal of the application by the petitioner under Section 167(2) of the Code of Criminal Procedure for grant of default bail, would not come in his way insofar as the adjudication of the present petition is concerned.

(10) The petitioner is admittedly in custody since 20.11.2019. He is in incarceration for the last more than 08 months. The Court is accordingly satisfied that no useful purpose would be served in detaining him any further and that he is entitled to be released on bail.

(11) Consequently, the revision petition is allowed and the impugned order dated 20.04.2020 passed by the Juvenile Justice Board, Gurugram and order dated 21.05.2020 passed by the Additional Sessions Judge, Gurugram are set aside. Without adverting to the merits of the case or commenting thereon, at this stage, the petitioner is ordered to be released on bail subject to furnishing adequate bail/surety bonds to the satisfaction of the Principal Magistrate, Juvenile Justice Board, Gurugram.

(12) The legal guardian of the petitioner shall regularly monitor his movement and ensure that the petitioner does not come in association with any known criminals and does not indulge in any other offence.

(13) It is clarified that any observation made hereinabove shall not be construed as an expression of opinion on the merits of the case.

Tribhuvan Dahiya