

Axxx (Juvenile) Vs State Of Haryana

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Aug. 4, 2020

Acts Referred: Juvenile Justice (Care And Protection Of Children) Act, 2015 " Section 2(13), 12, 12(1)

Indian Penal Code, 1860 " Section 34, 120B, 148, 149, 302, 364, 365

Arms Act, 1959 " Section 25

Code Of Criminal Procedure, 1973 " Section 167(2)

Hon'ble Judges: Suvir Sehgal, J

Bench: Single Bench

Advocate: Navneet Singh Chhokar, Gaganpreet Kaur

Final Decision: Allowed

Judgement

Suvir Sehgal, J

The present revision petition has been filed by Axxx (name withheld), 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,

Gurugram whereby his prayer met the same fate.

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.

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.

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 thereagainst was dismissed by the Sessions Court on 16.05.2020. The petitioner could not simultaneously invoke Section

12 of the Act.

I have considered the rival submissions.

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.

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 Vs.

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 Vs.

State of Punjab', decided on 21.05.2020.

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.

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.

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.

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.

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.

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