**(2003) 09 P&H CK 0130**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Criminal Revision No. 1362 of 2003

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| Atul Kumar and Another | | APPELLANT |
| | Vs | |
| State of Haryana | | RESPONDENT |

**Date of Decision:** Sept. 19, 2003

**Acts Referred:**

- Juvenile Justice (Care and Protection of Children) Act, 2000 - Section 12, 2, 2(I), 52, 53
- Penal Code, 1860 (IPC) - Section 147, 149, 302, 323

**Citation:** (2003) 6 CriminalCC 635

**Hon'ble Judges:** M.M. Kumar, J

**Bench:** Single Bench

**Advocate:** D.S. Bali, with Mr. D.V. Gupta, for the Appellant; G.P.S. Nagra, AAG (Haryana), for the Respondent

**Final Decision:** Allowed

**Judgement**

M.M. Kumar, J.

This petition filed u/s 53 of the Juvenile Justice (Care and Protection of Children) Act, 2000(for brevity, "the Act") is directed against the order dated 12.6.2003 passed by the Additional Sessions Judge, Fatehabad, declining the application of the petitioners. The petitioners who are "juvenile in conflict with law", within the meaning of Section 2( I) of the Act are facing allegations in case F.I.R. No.99 dated 29.3.2003, under Sections 302/323/147/149 of the Indian Penal Code, registered at P.S. City Tohana. The allegations in the F.I.R. are as understatement of Jaibir Singh son of Ramphal Caste Jat resident of Bhodi aged about 18 years: stated that I am a resident of aforementioned address and am a student of Government Senior Secondary School Tohana and study in 10+1. Today on 29.3.2003 at about 9.15 AM, I alongwith Rajinder son of Siri Ram, Jat resident of Bhodi who is studying alongwith me in 10+1 were going to School by Atul Bus service. When this Bus reached Village Amavi, the Checker of the bus namely, Suresh asked for the travelling ticket and I replied that we are students and asked us to show the

I. Card and then I and Rajinder said that today we have forgotten to take the I. Card and we will produce the I. Card tomorrow and further said that if you want money for the tickets you can take and we will take back the money after showing the I. Card. On this Suresh started abusing by the names of mother and sister and said you will be taught a lesson for not buying the tickets. When the Bus reached the Govt. College Tohana then Suresh, Checker got down near the College. I alongwith Rajinder got down from the Bus near Bhuna crossing Tohana and went to school. At 10.45 AM when we were going to village after noting down the date sheet and reached near Bhuna Road Tohana and stood near the shop of Hair Dresser Subhash and there one Mahabir Singh son of Ram Kumar came and stood near us, who is the brother of Rajinder. Meanwhile Suresh Checker of Atul Coach and Atul son of Sant Lal Bishnoi resident of Court Road, Tohana alongwith other three persons out of which to person were of wheatish colour and one was of dusty colour and I do not know their names. I can recognize them if they come in front of me. When they saw us they started abusing us and said that you have not taken the tickets in the bus and we will teach you a lesson. Immediately after this Rajinder said to these person why are you getting angry, we have not harmed you. Immediately after this these persons caught hold of Rajinder and laid him on the road and started giving fist and leg blows. Atul gave a lalkara that today he be finished. Meanwhile all these persons started beating Rajinder and throwing him time and again on the road. I alongwith Mahabir tried to rescue Rajinder from these five persons. Then Suresh gave a first blow on my left eye and Atul give me a leg blow on chest and I fell down. After this 1 and Mahabir made a noise of ''Bachao Bachao'' and immediately after this all of them ran away from the spot. I alongwith Mahabir took Rajinder to a Govt. Hospital by putting him in a Rickshaw where the doctor declared Rajinder dead. Suresh, Atul and three other persons have given blows to Rajinder because of which Rajinder had died. Action be taken against them."

2. The petitioners filed an application u/s 12 of the Act before the Duty Magistrate who dismissed the same on 26.4.2003 holding that the petitioners do not deserve the concession of bail because the charges against them were serious and they were on the verge of attaining majority on the date of commission of crime i.e. 29.3.2003. Feeling aggrieved, the petitioner filed an appeal u/s 52 of the Act before the Additional Sessions Judge, Fatehabad and their appeal was also dismissed. The operative part of the order of learned Additional Sessions Judge reads as under:-

I have taken into consideration the above arguments and have gone through referred case law and file. Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2000 reveals that when an accused of a bailable or non-bailable offence, and apparently a juvenile, is arrested or detained will be released on bail with or without surety but he shall not be released if there appear reasonable grounds 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. Ld. PP submitted that separate challans of these accused have been prepared and are likely to be filed before trial Court. No doubt birth certificates and observation of

the learned C.J.M. indicates that the accused are juveniles, but at the same time nature and gravity of the offence is also to be seen while giving concession of bail. If juvenile is granted bail at this stage, it would expose him to moral danger. Moreover, findings regarding juvenile is to be given by the Board who shall hold the enquiry in accordance with the provisions of the Act and will make such order in relation to juvenile as deems fit. In these facts and circumstances, it would not be in the interest of justice to release the accused on bail. As such bail application is hereby declined. The prosecution is directed to keep these accused in Borstal jail and will intimate to the parents and guardian about this, file be consigned to record room.

3. Mr. D.S. Bail, learned senior counsel has argued that u/s 12 of the Act, a "Juvenile in conflict with law" is entitled to bail unless there is evidence showing that the release of the juvenile on bail is likely to bring him in association with any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice. The learned counsel has pointed out that the aforementioned ground has to be substantiated by producing some evidence on record and it cannot be the ipse dixit of the prosecution. In support of his submission, the learned counsel has placed reliance on three judgments namely; Sahabuddin @Shabboo v. State of Uttar Pradesh, 2003( 1) RCR(Cri 498, Sanjeev Kumar v. State of Haryana, 2003(1) RCR (Cri) 1 and Gopinath Ghosh Vs. The State of West Bengal,

4. Mr. G.P.S. Nagra, the learned State counsel has pointed out that there are Bostal Jails for keeping the juveniles which provide amicable atmosphere and have facilities of school, playground and dispensary. However, the learned counsel has remained unable to point out any evidence on record to bring the case of the petitioners under any of the exception, namely, that the petitioners, in case of release on bail are likely to come to the association of any known criminal or their release would defeat the ends of justice.

5. After hearing learned counsel for the parties at a considerable length, I am of the considered opinion that it is a fit case where the benefit of Section 12 of the Act should be extended to the petitioners. The school certificates of the petitioners show that they are born on 27.4.1985 and 10.7.1985 and both of them were below the age of 18 years on the date of commission of crime i.e. 29.3.2003. A child below the age of 18 years is considered to be juvenile within the meaning of sub-section (k) of Section 2 of the Act irrespective of the male or female. The basic object of the Act is to prevent and treat the juvenile delinquency keeping in view the developmental needs of the juvenile in conflict with law. A child friendly approach has also been stressed as one of the objects of the Act. The care and attention which emanates from the parental affection mitigating and helping in eradication of criminal tendencies on the part of a "juvenile in conflict with law" have to be kept in view. If the tender age "juvenile in conflict with law" is kept in an unnatural atmosphere depriving him the natural love and affection of his parents then the development of such a child would lead to strengthening of criminal tendencies. The Act is a beneficial piece of legislation and cannot be nullified by permitting the prosecution to shield behind the technicalities. The observations of the Supreme Court in Gopinath

Ghosh''s case (supra) in respect of similar legislation i.e. West Bengal Children Act, 1959 read as under:-

It clearly transpires from a combine reading of the sections hereinbefore extracted that where a juvenile delinquent is arrested, he/she has to be produced before a juvenile court and if no juvenile court is established for the area, amongst others, the Court of Sessions will have powers of a juvenile court. Such a juvenile delinquent ordinarily has to be released on bail irrespective of the nature of the offence alleged to have been committed unless it is shown that there appears reasonable grounds for believing that the release is likely to bring him under the influence of any criminal or expose him to moral danger or defeat the ends of justice.....

6. I am further of the view that there has to be some evidence on record showing that after the release on bail, the petitioners are likely to come in association with any known criminal or their release on bail would expose them to moral, physical or psychological danger or that their release would defeat the ends of justice. In a given case if the parents of the petitioners are also criminals either ex-convicts or members of a gang, it may be possible for the Court to refuse bail. Another example could be whether the petitioners have repeated the crime showing lapse on the part of the parents after their release while on bail, then the case may be covered by the exceptions carved out u/s 12 of the Act. However, in a case like the one in hand, where no material has been placed on record to show that the release of the ''juvenile in conflict with law'' would defeat the ends of justice or any other exception, the petitioners cannot be denied the benefit of bail merely on the basis of conjectures or opinion formed by the prosecution or the Court. Reliance in this regard could be placed on the judgments in the case of Sahabuddin @ Shabboo''s case (supra) and Sanjeev Kumar''s case(supra).

7. For the reasons stated above, this petition is allowed and the orders of the Courts below are set aside. The petitioners are held entitled to grant of bail u/s 12 of the Act. Accordingly, it is ordered that they be released on bail subject to their furnishing bail bonds to the satisfaction of Chief Judicial Magistrate/Duty Magistrate, Fatehbad.