

CRR No.3838 of 2018 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR No.3838 of 2018 (O&M)

Date of decision: 30.06.2020

Master Bholu

...Petitioner

Versus

State of Haryana and another

....Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Rupinder Khosla, Sr. Advocate
with Mr. Rajesh Lamba, Advocate
and Mr. Sarvesh Malik, Advocate
for the petitioner (through video conferencing)

Mr. R.K. Ambavta, AAG, Haryana.
(through video conferencing)

Mr. Sumeet Goyal, Advocate
for respondent No.2 (through video conferencing)

Mr. Anupam Singla, Advocate
for the complainant (through video conferencing)

ARVIND SINGH SANGWAN J.

Prayer in this revision petition is for setting-aside the order dated 30.10.2018 passed by the Principal Magistrate, Juvenile Justice Board, Gurugram (for short 'the Board), dismissing the application for bail filed by the petitioner as well as the order dated 05.11.2018 passed by the Appellate Court/Additional Sessions Judge, Gurugram, dismissing the appeal filed by the petitioner against the order dated 30.10.2018.

The case was heard at length through video conferencing. Though, in view of the judgment of the Hon'ble Supreme Court, the

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Court is not required to pass a detailed judgment deciding a bail application, however, it is necessary to record, consider and discuss the arguments of both the parties.

It is also worth noticing that on perusal of orders dated 22.02.2019, 28.02.2019 passed by the Hon'ble Supreme Court in SLP (Criminal) No.10123 of 2018 and dated 04.02.2020, passed in SLP (Criminal) No.41570 of 2018, this revision petition praying for regular bail is to be decided treating the petitioner as an "Adult" (only for the purpose of deciding bail).

The petitioner, in the meantime, moved an application i.e. CRM No.8403 of 2020 in the present case, for grant of interim bail to allow him to take practical and theoretical examination of Class 12th (Sr. Secondary Class 12th examination) to be undertaken by the National Institute of Open Schooling and the said application was allowed on 06.03.2020 with certain riders. In the meantime, the Hon'ble Supreme Court in SLP (Criminal) No.2457 of 2020, further directed this Court to dispose of the application at the earliest vide order dated 02.06.2020.

Before referring to the arguments of learned Senior counsel appearing for the petitioner, who has assailed the observations of both the Courts below, with one of the ground that the impugned orders have been passed, touching the merits of the case, it would be relevant to reproduce the operative part of the orders passed by the Board as well as the Appellate Court.

The operative part of the order dated 30.10.2018 passed by the Board, is reproduced as under:-

“3. Brief facts of the present bail application are that the earlier bail application under Section 12 of the Act filed by applicant was dismissed by Ld. Additional Sessions Judge, Gurugram on the ground that the transfer application preferred by CBI was pending before the Hon'ble Punjab and Haryana High Court, Chandigarh but a liberty was given to the applicant to file bail application subject to the decision of Hon'ble Punjab and Haryana High Court, Chandigarh in aforesaid transfer application. As the present case has been remanded back to Juvenile Justice Board Gurugram, transfer application moved by CBI before the Hon'ble Punjab and Haryana High Court, Chandigarh stands infructuous. It has been mentioned that the applicant has been in custody in the present case for almost one year which was sufficient to entitle, the Juvenile to be admitted to concession of bail. Further, the investigating agency i.e. CBI has been violating the provisions of the Act as the entire investigation has not been completed till date and supplementary final report under Section 173(8) Cr.P.C. is still awaited. The applicant has no criminal background; a student of 11th class and the provisions of Section 12 of the Act entitles the applicant to claim the bail as a matter of right. The three grounds for rejection of bail to juvenile as mentioned in proviso attached to Section 12 (1) of the Act are not made out against the applicant and moreover, the sole fact that two conflicting reports have come on record from two different investigating agencies was sufficient to admit the juvenile to the concession of bail. Lastly, the report of probation officer speaks volume about the act and conduct of applicant being normal and a person with good character which further makes a strong case in favour of juvenile to be admitted to concession of bail. With these submissions, it is prayed that the juvenile may kindly be

admitted to concession of bail.

4. Notice of the bail application was given to State and reply has been filed by investigating agency CBI through investigating officer of case which runs into 19 pages. The reply to bail application has been divided into three heads namely preliminary submissions, para-wise reply and additional pleas. Under the head of preliminary submissions, entire investigation which has been mentioned in final report under Section 175 Cr.P.C. has been reproduced. The Board is of the view that aforesaid facts need not be mentioned here for the reason the manner of investigation has been otherwise sufficiently detailed in final report submitted under Section 173 Cr.P.C. and moreover, manner of investigation was not expected of CBI too be narrated in reply to bail application and just confined to the grounds on which concession of bail has been pressed for, by applicant.

Coming to the. paragraph-wise reply and additional please raised by investigating agency, it has been alleged that the transfer application filed by CBI pending before the Hon'ble Punjab and Haryana High Court Chandigarh in view of Order dated 11.10.2018, has not become infructuous. The procedure as prescribed under the Act has been duly complied with and there was ample evidence on the case file to establish on record beyond all shadows of reasonable doubt that the applicant and not any other person has committed the murder of a seven years old child in the school. It has been mentioned that the gravity of offence has always to be considered at the time of granting the bail to applicant/juvenile in conflict with law. The act & conduct of juvenile in conflict with law as detailed in final report under Section 173 Cr.P.C makes it ample clear that the case of the juvenile falls within the exceptions to general rule of bail to be granted to juvenile

and as such, he was not entitled to concession of bail, as prayed for. The investigating agency has relied upon the settled law laid down by Hon'ble High Courts which find a due mention in reply to bail application. It has been specifically mentioned that a new provision has been inserted in the present Act to deal with the specific cases, as is the one in hand, where a person who has committed heinous offence and between the age group of 16 to 18 years, has to be treated as an adult. So going by the intent of legislature, juvenile between the age group of 16 to 18 has to be treated differently from the juvenile below the age of 16 years. It has been further mentioned that there were no two contradictory reports on record for the reason the previous investigating agency has wrongly implicated conductor Ashok who stands discharged from the Hon'ble Court of Ld.ASJ/Gurugram and as such, only the juvenile is liable for the murder of a seven years old child in the school. Moreover, the statement of teachers namely Ms.Bhavana Agarwal, Ms. Grace, Ms. Sumeeth Hazra and Staff Nurse Ms. Mini Gopal recorded by Probation Officer revealed that he was definitely not a child with expected normal behaviour. Even, the investigation conducted by the CBI revealed that Bholu made internet search about poisoning, various poisons, their effects and their sources, during August-September 2017 and the same was downloaded by CBI during the course of investigation in the presence of independent witnesses and member, Juvenile Justice Board, Gurugram. He also searched various sites on internet on 19.9.2017 for "How to wipe out fingerprints from the scene of crime." Concluding it has been mentioned by investigating agency that no ground for bail was made out in favour of juvenile; statutory/default bail has been even dismissed by Hon'ble Supreme Court of India and there was every possibility of

applicant tempering with the evidence and/or absconding from the country.

Ld. Counsel for complainant did not file reply to bail application and opted to orally argue the matter.

5. I have heard ld. counsel for Juvenile; ld. APP for State assisted by ld. PP for CBI & ld. counsel for complainant and also gone through the case file thoroughly.

*6. It has been argued by learned counsel for Juvenile that admittedly the applicant has been in custody for a period of one year. Going by the reply of investigating agency, no investigation qua juvenile is pending and supplementary final report under Section 173(8) Cr.P.C. has nothing to do with the applicant As such, going by provisions of Section 12 of the Act, the juvenile is entitled to the concession of bail as a matter of right. The onus was upon the prosecution to prove that the present case falls within the ambit of proviso attached to Section 12(1) of the Act but it has miserably failed to do so. Moreover, the report of probation officer placed on file shows that the applicant was a child with expected normal behaviour which also stands duly supported from School Certificates issued by concerned school. It is further argued that the intention of legislature as gathered from the preamble of the Act and also, almost all the rules and guidelines issued by United Nations from time to time show that Juvenile is entitled to concession of bail, He relied upon case laws titled as **Vikas Yadav Vs. State of Haiyana 2009 (4) RCR 440, Gopinath Ghosh Vs, the State of West Bengal 1984 (1) CLR 697, Baljinder Vs. U.T Chandigarh 2005 (1) RCR 733 Satbir Vs. State of Haryana 2011 (2) RCR 621, Amit Vs. State of Hayana 2007 (3) RCR 203, Ramesh @ Meshu Vs State of Haryana 2005 (1) RCR 65, Bhanuparkash @ Banti aged***

16 years through Natural Guardian, father Babulal Vs. The State of Rajasthan 2017 (2) WLC (Raj.) (UC) 254, Raju Ram @ Rajesh Banjara minor through his natural guardian Sh. Ishwar Vs. State of Rajasthan 2017 (1) WLC 202, Karamjeet Singh minor through his natural guardian mother Smt. Rajkaur Vs. State of Rajasthan 2017 (3) WLN 151, Amit Dagar Vs. State of Rajasthan 2016 (3) WLN 486, Bhairu Singh minor through his guardian uncle Sh. Hon Singh Vs, State of Rajasthan 2016 (3) CrLR 1573, Chamkaur Singh Vs. State of Punjab 1996 (1) RCR 517 and Neha Vs. State of Punjab 2018 (2) RCR Criminal 227. With these submissions, it is prayed that the bail application of juvenile may kindly be allowed.

7. On the other hand, ld. APP for State duly assisted by ld. PP representing CBI and ld. counsel for complainant argued that the murder of seven years old child has been, committed by applicant in a very barbaric manner, The evidence collected during the course of investigation sufficiently shows that the applicant committed the murder of seven years old child. They further argued that the recovery of weapon and relevant places were demarcated in the presence of member of Juvenile Justice Board, Gurugram which shows that investigation carried out by the CBI in the present case was a fair investigation. The documents collected during the course of investigation coupled with the statements of school staff recorded by probation officer shows that the applicant was never a child with expected normal behaviour and he was well aware of the acts committed by him and he even tried to destroy the evidence from the scene of crime. Though a juvenile can claim the bail as a matter of right as per the provisions of Section 12 of the Act but proviso attached thereto curtails the right of

juvenile to a great extent. The circumstances of the present case as detailed in final report submitted under Section 173 Cr. P.C. shows that all the three exceptions to the general rule of the bail were made out against the juvenile and as such, he was not entitled to the concession of bail as a matter of right. Moreover, statutory bail/default bail previously filed by applicant also stands dismissed up to Hon'ble Supreme Court of India. With these submissions, they prayed that the present bail application may kindly be dismissed with heavy costs.

8. Before coming to the merits of present bail application, the Board would like to cite a brief history of the proceedings leading to the filing of present application by applicant before the Board. The applicant was initially produced before Juvenile Justice Board, Gurugram. As the heinous offence has been alleged to be committed by juvenile between the age group of 16 to 18 years, preliminary assessment under Section 15 of the Act was carried out by the then Presiding officer Sh. Davender, Ld. Principal Magistrate, Juvenile Justice Board, Gurugram. In pursuance of order under 18 (3) of the Act passed on the basis of preliminary assessment carried out under Section 15 of the Act, the Board ordered the transfer of the trial of the case to Children's Court having jurisdiction to try such offence. In the course of proceedings, applicant availed the legal remedy before Hon'ble Punjab and Haryana High Court, Chandigarh and vide order dated 11.10.2018, the present case was remanded back to Juvenile Justice Board, Gurugram for afresh consideration after assessing the intelligency, maturity, psychical fitness as how the juvenile in conflict with law was in a position to know the consequence of the offence. Further while conducting preliminary assessment, opinion of the psychologist of the Government Hospital was also to be

obtained by Juvenile Justice Board, Gurugram. The entire proceedings were to be completed within a period of six weeks of the date of receipt of certified copy of the order. Accordingly, the present case was received by the Board from the court of Ld. ASJ/Gurugram along with the present bail application to be disposed of as per law.

9. Coming back to the present bail application, the applicant has sought concession of bail relying on the beneficial provision contained in Section 12 of the Act. The command of Section 12 is that 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, the said person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 or any other law for the time being in force, be released on bail with or without surety. The exceptions to the said rule have been carved out as follows:

-if there appears reasonable grounds for believing that the release is likely

(i) to bring him into association with any known criminal

or

(ii) expose him to moral, physical or psychological danger or

(iii) that his release would defeat the ends of Justice,

The perusal of aforesaid provision makes it amply clear that the defence was all required to prove before the Board that the applicant was a child in conflict with law and the aforesaid sole fact entitles applicant the concession of bail, as prayed for. As the bail application has been opposed by investigating agency-CBI, the onus was upon them to show that the present case is squarely covered under the above mentioned exceptions which in turn does not entitle the juvenile the concession of bail as

a matter of right. It has been consistently maintained by the prosecution that the applicant committed the murder with the aid of weapon recovered during the course of investigation, in a very barbaric manner. The chain of events set out in the final report under Section 173 Cr. F.C makes a very strong case in favour of prosecution to the effect that the manner of commission of alleged murder of a seven years of child does not warrant the release of juvenile on bail as it would result in defeating the ends of justice. Obviously, there is no straight jacketed formula to arrive at a conclusion as to whether ends of justice would be defeated or not and accordingly, facts of the present case have to be considered along with medical evidence in toto to arrive at a conclusion as to whether ends of justice would be defeated, if juvenile is admitted to concession of bail at this stage of the case.

10. *The Board has carefully perused the final report submitted under Section 173 Cr.P.C. along with other accompanying documents. There has been a CCTV footage wherein it has been clearly shown that the applicant took deceased to boys-toilet situated on ground floor. The classroom of applicant was situated on another floor and not ground floor: school terminal exams were going on as such he was to report in class at 8:00 AM but still he was on ground floor and his hands were found to be in wet condition & also cleaned by applicant with the aid of handkerchief. The medical evidence shows that two cuts were given to the deceased with the aid of sharp edged weapon which was the only and ultimate cause of his death. Moreover, the applicant and deceased were otherwise known to each other on account of attending music classes together as such, it was easier for applicant to take deceased to the boys-toilet. The aforesaid facts shows that the applicant did not intent to appear in the*

exams; he was carrying knife in his bag on alleged day of incident and convinced the deceased to accompany him to bathroom as they were known to each other which in turn sufficiently show that the applicant had come prepared from the home carrying a sharp edged weapon with a plan to murder which was finally executed by committing a murder of seven years child. Further, it has come in the investigation of the case that on many several previous occasions, the applicant had discussed the thought of giving poison to children of the school so as to postpone/defer the exams and/or parent teachers meeting. To the utmost surprise of the Board, applicant of such age planned the murder in such a way that he purchased a sharp edged weapon; carried the same in his bag to school and prior to incident in question, he usually used to read articles pertaining to poison and removal of finger prints. The aforesaid conduct of the applicant shows that he was very much inclined to commit a heinous offence and even looking for possible ways to escape from legal consequences of heinous act planned to be committed by applicant by going through different articles on Internet. Moreover, the injuries on the neck region of deceased show that the applicant had clearly made up his mind of killing the child and to achieve the said purpose, he caused injuries at such a vital part of deceased child. Even the medical report is suggesting that the deceased must have expired within 1-2 minutes of injuries which sufficiently shows the barbaric nature of act committed by applicant. Lastly, the facts that the parents of applicant approached the husband of teacher of the school with a request to spread good things about applicant and earlier investigating agency falsely & intentionally implicating conductor Ashok Kumar in the present case show that every possible effort was made to exonerate the applicant

from the heinous offence committed by him and to wrongly implicate some other person in his place.

*All these fact and circumstances of the case clubbed together to lead to a logical inference that the act and conduct of the, applicant coupled with the medical evidence do not entitle the applicant the concession of bail, as it would definitely result in defeating the ends of justice. The Act is certainly meant to treat a child with care and sensitivity offering him a chance to reform and settle into the mainstream of society, the same can not be allowed to be used as a ploy to dupe the course of Justice while dealing with the case of heinous offence. The provisions of the Act cannot be interpreted to work only for the benefit of Juvenile ignoring the cries of victim child whenever, a child become victim of offence, let alone heinous offence like murder craves and cries for Justice. By showing misplaced sympathy to Juvenile, who has perpetrated offence like murder, victim and the society is denied Justice which is not and cannot be the intention of law. Reliance in this regard can be placed upon case law titled as **Virendra Versus State of UP, Criminal Revision No.345 of 2011 decided on 30 April 2014**. As such, the judgments relied upon by defence do not make a fit case for concession of bail to applicant, in light of facts and circumstances discussed above.*

In view of aforesaid discussion and findings, the present bail application filed by applicant under Section 12 of the Act stands dismissed.”

Similarly, the operative part of the order dated 05.11.2018 passed by the Appellate Court, is reproduced as under:-

“2. Background of the matter is that on 08.09.2017, a seven year old student stood murdered in his school premises. Appellant, a student of 10+2 class of the

same school stood apprehended on 07.11.2017 in the case by the CBI. Appellant gone seeking bail under Rule 10(5) of The Juvenile Justice (Care & Protection of Children) Model Rules, 2016 (to be hereinafter referred as JJ Rules) and this court at that time while conducting proceedings as the Children's Court gone declining same vide order dated 08.01.2018. Appellant then gone seeking default bail under Section 167(2), CrPC, but it was declined by this Court on 05.02.2018, by Hon'ble High Court vide order dated 06.06.2018 and by Hon'ble Supreme Court of India vide order dated 20.07.2018. The revision of the appellant bearing No.635 of 2018 is running filed on 14.02.2018 against bail order dated 08.01.2018 and same is presently pending before Hon'ble High Court for 15.11.2018. In para No.15 of said revision petition, appellant has gone specifically asserting that if violation of Rule 10(5) would not give benefit to him to claim default bail, then same would definitely have a bearing on his right to claim regular bail under Section 12 of the Act. Thus, appellant has gone seeking regular bail from Hon'ble High Court in the revision petition if he is found not entitled for the default bail on account of violation of the provisions contained under Rule 10(5). Still appellant gone filing a separate bail application under Section 12 of the Act, which this court dismissed vide order dated 30.07.2018. Despite pendency of said revision against the bail order, appellant gone filing afresh bail application under Section 12 of the Act before this court on 23.10.2018 seeking regular bail knowing well that this court already vide its order dated 02.07.2018 has made a reference to learned Sessions Judge, Gurugram that this court has no jurisdiction to conduct the trial on account of there being a special CBI court at Panchkula to deal with all CBI matters. As Hon'ble High Court vide its order dated

11.10.2018, as passed in Criminal Revision No.2366 of 2018 has gone directing the Juvenile Justice Board, Gurugram for afresh preliminary assessment as required under the provisions of Section 15 of the Act and said order of Hon'ble High Court was brought in the notice of this court for the first time through said bail application dated 23.10.2018, hence, on 23.10.2018 itself entire case file was sent back to the Juvenile Justice Board, Gurugram alongwith the bail application to deal with the matter and to comply directions of Hon'ble High Court. The Juvenile Justice Board dismissed the bail application vide impugned order dated 30.10.2018 and main case is pending before the Board for 06.11.2018 for further proceedings.

3. At the cost of repetition, this court will have to say that once revision petition against previous bail order is still pending before Hon'ble High Court and another revision is also pending for 15.11.2018 before Hon'ble High Court as moved by the CBI for the transfer of the trial to the CBI court at Panchkula, then moving of present bail application dated 23.10.2018 is neither appropriate nor maintainable leaving apart the merits of the case as there is no change of circumstance since the dismissal of previous bail application and where accused is charged of an offence punishable with life imprisonment, mere fact that the trial is not likely to be concluded in the near future either by itself or coupled with the fact that accused had undergone certain period of incarceration would not be sufficient for enlarging him on bail. Reliance in this regard can well be placed upon case-law State through CBI Vs Amaramani Tripathi – 2005(4) RCR(Criminal) 280 (SC).

4. In view of above discussion, no ground to grant bail to appellant is running made out in his favour. Resultantly, this court finds no illegality in the impugned

order passed by the Principal Magistrate, Juvenile Justice Board, Gurugram. Consequently, appeal is dismissed being devoid of merits. Copy of order be sent to the court of Principal Magistrate, Juvenile Justice Board, Gurugram. File be consigned to record-room after due compliance.”

Learned Senior counsel for the petitioner has argued that while passing the impugned orders, the Board as well as the Appellate Court has used the language presuming that the act and conduct of the petitioner does not entitled him the concession of bail as it is observed that no misplaced sympathy can be shown to a juvenile who has perpetrated the offence like murder. It is also submitted that the Courts below, with a pre-determined mind, has passed the impugned orders.

Learned Senior counsel for the petitioner has argued that as per Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter to be referred as 'the Act'), a person who is apparently a child alleged to be in conflict with law, be notwithstanding anything contained in the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') 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 under the care of any fit person.

Learned Senior counsel for the petitioner has further submitted that it is provided under Section 12(1) of the Act that a 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

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justice, and the Board shall record the reasons for denying the bail and circumstances that led to such a decision.

Learned Senior counsel for the petitioner has also argued that as per Section 12 of the Act, there are exceptions on which, the bail can be declined to a juvenile in conflict with law and the petitioner do not fall in any of the exception.

Counsel for the petitioner has further referred to Section 3 of the Act to submit that the basic concept, theme and principles in administration of the Act are that there is a principle of presumption of innocence upto the age of 18 years; a right to be heard and participate in all the process and decision affecting the right of the child; principle of best interest of the child; principle of non-stigmatising semantics i.e. adversarial or accusatory words not to be used in the process pertaining to a child; the principle of institutionalisation as a measure of last resort and the principle of natural justice i.e. the right of fair hearing, rule against bias and the right to review, should be followed.

Learned Senior counsel for the petitioner has referred to a judgment passed by this Court "*Bittu vs State of Haryana*", 2015(2) RCR (Criminal) 316, wherein a juvenile in conflict with law was granted the concession of regular bail. Similar view was taken by this Court in CRR No.885 of 2016 titled as "*Abhay @ Matru vs State of Haryana*" and CRR No.711 of 2017 titled as "*Hassandin @ Hassu Gujar vs State of Punjab*".

Learned Senior counsel for the petitioner has next argued that under Section 19(3) of the Act, it is provided that the Children

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Court has power to ensure that the child, who is found to be in conflict with law, is sent to a place of safety till he attains the age of 21 years and thereafter, the said person be transferred to a Jail.

Learned Senior counsel for the petitioner has also submitted that the petitioner is in custody since 07.11.2017 and despite a lapse of long period, the trial has not commenced. It is further submitted that in view of the pendency of the SLP before the Hon'ble Supreme Court, wherein *status quo* has been granted, the trial is not proceedings. It also argued that there are 127 prosecution witnesses cited in the list of witnesses and it will take long time in conclusion of the trial.

Learned Senior counsel for the petitioner has further argued that as per the Juvenile Justice (Care and Protection of Children) Model Rules, 2016 (hereinafter to be referred as 'the Rules'), again certain safeguards are provided for a child. It is submitted that as per Rule 13, relating to the procedure in relation to Children's Courts and Monitoring Authorities and under Sub-Rule (8) of Rule 13, it is provided that where a Children's Court decides that there is a need for trial of the child as an "Adult", it shall follow the procedure prescribed by Cr.P.C., as of a trial by Court of sessions by maintaining a child friendly atmosphere. Learned Senior counsel for the petitioner has, thus, argued that even if the petitioner is to be tried as an "Adult", the trial will be conducted by Children's Court.

Learned Senior counsel for the petitioner has next argued that as per Sub-Rule 5 of Rule 10, it is provided that in case of heinous offence, alleged to have been committed by a child, who has completed

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the age of 16 years, the Child Welfare Police Officer, shall produce the statement of witnesses, recorded by him and other documents prepared during the course of investigation within a period of 01 month from the date of first production of the child before the Board, a copy of which shall be given to a child or parent or guardian of the child. It is further submitted by counsel for the petitioner that the Central Bureau of Investigation (CBI) has not followed the aforesaid Rule.

Learned Senior counsel for the petitioner has further argued that since the Juvenile Justice (Care and Protection of Children) Act or the Juvenile Justice (Care and Protection of Children) Model Rules, 2016, are complete code, the provision of Section 437 Cr.P.C., will not apply in the present case.

Learned Senior counsel for the petitioner has further submitted that in the earlier petition, the CBI has admitted that it has no infrastructure to investigate the case. It is further argued that in the observation home there is overcrowding of children and the petitioner has already lost considerable weight, therefore, the petitioner be released on bail.

Before referring to the submissions made by counsel for the CBI or the complainant, it would be relevant to refer to the reply filed by the Investigating Officer/Inspector, CBI dated 05.12.2018. The operative part of the said reply, reads as under:-

“3. That during the course of investigation by CBI, every aspect was explored on the basis of minute inspection of the scene of crime, analysis of the CCTV footage and movement of the students near the scene of crime on the day of incident for connecting with the

sequence of events on that day with the crime. Students, teachers, staff and other employees of the school were examined in detail. On 07.11.2017, CBI came to the conclusion that there was enough evidence to substantiate the involvement of Bholu petitioner (imaginary name given by Ld Trial Court) a 11th standard student of Vidyalaya, in the commission of murder of 7 year old Prince in the boy's washroom in Vidhyalaya on 08.09.2017 by slitting the throat of the child with knife. Hence the Juvenile in conflict with law was apprehended on 07.11.2017 at 23.30 hrs for committing a heinous offence after explaining the grounds of apprehension and the charges levelled against him to his father Shri. Vinod Kumar Ragav. The apprehension was effected in presence of his father, Juvenile Welfare Police Officer of P.S. Lodhi Colony, New Delhi, Welfare Officer of CBI and two independent witnesses.

4. That after effecting apprehension, Bholu was interviewed very cautiously in a child friendly manner in-order to keep away him from the feel of custodial interrogation in the presence of Probation Officer, Child Welfare Police Officer and independent witnesses. During such interview, he voluntarily admitted his involvement in committing the murder of Prince on 08.09.2017 in ground floor boys washroom of Vidhyala, Gurugram which was recorded as statement (no signature of the juvenile obtained) in presence of his father, Welfare Police Officer of P.S Lodhi Colony, New Delhi, Welfare Officer of CBI and two independent witnesses and submitted before the Ld. Juvenile Justice Board, Gurugram District Courts, Haryana.

5. It is submitted that Bholu was sent to Seva Kutir Kingsway Camp, Delhi after effecting apprehension as per the provisions of Juvenile Justice (Care and Protection of

Children) Act 2015 sub-section (2) of Section 12 and Rule No. 8 (3) Juvenile Justice (Care and Protection of Children) Model Rules, 2016 and subsequently he was produced before Ld. Juvenile Justice Board, Gurugram District Courts, Haryana on 08.11.2017 within 24 hours of his apprehension.

6. It is submitted that, subsequently Bholu was taken into Police Custody for 3 days as per the order of Ld. Juvenile Justice Board, District Courts, Haryana on 08.11.2017. The Ld. Juvenile Justice Board, District Courts, Haryana considering the significance of the case that it is a very sensational case and falls into the purview of heinous offence wherein a 7 year old child was brutally murdered inside the boy's toilet at the ground floor of Vidhyalaya granted 3 days police custody of the child from 08.11.2017 to 11.11.2017 with specific instruction that Bholu has to be examined between 10.00 AM to 06.00 PM and he has to be placed at SevaKutir, Kingsway Camp, New Delhi for the said 3 days, the Ld. Juvenile Justice Board, Gurugram, Haryana also directed Ms. Gyanwati, Ld. Member, Juvenile Justice Board, Gurugram to remain present with the juvenile at the time of interrogation of Bholu by CBI during the period of police custody.

7. That during investigation, examination of certain witnesses of his class and Vidyalaya revealed that Bholu was planning to mix up the poison in the water bottle of some child or in the water tank in order to kill some child or someone else with the motive to cancel Parent Teacher Meeting and postponement of exams. The parent teacher meeting was held on 19.08.2017 whereas terminal examinations were conducted in the Vidyalaya from 06.09.2017. The said witnesses have confirmed these facts in their statements recorded u/s 164 Cr.P.C at Saket Courts, New Delhi.

8. That during investigation, examination of one of the witness revealed that Bholu asked him to arrange knife or poison as he wanted to kill someone for cancelling the Parents Teachers Meeting (PTM) as well as terminal examination. The said witness have confirmed these facts in their statements recorded u/s 164 of Cr.P.C at Saket Courts, New Delhi.

9. The investigation conducted by CBI revealed that Bholu used to surf internet and browse various websites relating to social networks, music, porno-graphy and gaming etc. by using the internet connectivity from his mobile devise Redmi Note 3 and his mail ID configured on the same. The said mobile was seized by CBI during the course of search conducted at his residence on 28.09.2017. The said websites were browsed by petitioner Bholu during July 11, 2017 to November 2, 2017.

10. That investigation conducted by CBI revealed that Bholu made internet searches about poisoning, various poisons, their effects and their sources, during August-September 2017 and the same was downloaded by CBI during the course or investigation in presence of independent witnesses and Member, Juvenile Justice Board, Gurugram. He also searched various sites on internet on 19.09.2017 for "How to wipe out fingerprints from the scene of crime. The said document has been filed by CBI with the chargesheet as Document No. 110.

SL. No	Site Visited/Searched	Date of visit/Search	Page.No. of Document. No.
1.	Can mouse poison kill you ?	09.08.2017	175
2.	How can I die by consuming poison ?	16.08.2017	176
3.	Mortein Rat Kill review	16.08.2017	177
4.	Management of celphos poisoning with a novel	17.08.2017	89-97

	<i>intervention A ray of</i>		
5.	<i>Case report acute severe suicidal poisoning by celphos (Case Report)</i>	17.08.2017	98-102
6.	<i>Visited</i> https://en.m.wikipedia.org/wiki/aluminiumphosphide <i>poisoning</i>	17.08.2017	103-108
7.	<i>Visited</i> https://www.slideshare.net/mobile/mohmeet/celphos-poisoning	17.08.2017	109-111
8	<i>Visited</i> https://www.scientificworld.in/2012/05/blog-post20.html?m=1 (Scientific World- Salphas Kya Hai Aur Kitna Ghatak Hai Salphas ka Asar including chat)	17.08.2017	112-120
9.	<i>Law Student leaves chilling suicide video on her tablet blames</i>	17.08.2017	122-123
10.	<i>Image from grihshobha</i>	17.08.2017	124-125
11.	<i>Viewed image from ratantimes.com</i>	17.08.2017	126-127
12.	<i>Visited Biometric Mythbusters: can you alter your fingerprints to hide your, searched for how to change your fingerprints and join the discussion</i>	19.09.2017	130-135 & 138-147
13.	<i>Visited for Jessica Lynn porn videos and searched for top porn stars</i>	19.09.2017	137
14.	<i>How to remove your fingerprints</i>	19.09.2017	148
15.	<i>How to remove your fingerprints and searched for how to change your fingerprints</i>	19.09.2017	153
16.	<i>Visited Jessica Lynn-Pornstar page Xvideos.com, searched for Jessica Lynn Porn videos and searched top porn star</i>	19.09.2017	153
17.	<i>Search for questions, people and topics as how do you</i>	19.09.2017	156-157

	<i>remove your fingerprints</i>		
18.	<i>Search for how to change your finger prints</i>	19.09.2017	158
19.	<i>Besides this, he also visited various porn sites and searched porn videos such as Korean Porn videos XNXX.COM, Jessica Lynn - Porn star page-XVideos.com, Jessica Lynn porn videos, Sophia Lecne Porn videos/porn hub.com, Sunny Leone videos, Page3-XNXX.COM, Porn videos of Sophia Leone, Sunny Leone videos:XVIDEOS.COM, Aundrey-Bitoni XVIDEOS.COM, Porn Viceos of Aundrey-bitoni, porn videos of Chanel, Chanel-preston video- XVIDEOS.COM, Game of Thomas Porn Videos/Pornhub.com and 10 hottest Game of Thomas Sex Scenes-You Tube etc.</i>	11.07.2017 to 02.11.2017	14, 16, 20, 22, 23, 24, 26, 27, 49, 50 and 51.

The aforesaid search/access of internet, before and after the commission of murder for the above mentioned purpose throws light on Bholu's conduct before the commission of Crime, his intention to commit the crime and his conduct after the commission of crime, to escape from the clutches of law.

11. *That Central Forensic Science Laboratory Report dated 26.12.2017 received from CFSL, CBI, New Delhi clearly established that chance print marked as Q-2 is identical with the specimen right thumb impression of Bholu. It is pertinent to mention that chance print Q-2 was lifted by CFSL Team on 23.09.2017 from inside the door near the lock in the toilet No.3 in which Master Prince was murdered. This proves the reason for which he was searching through the internet how to remove the*

fingerprints after the commission of this heinous crime.

12. *That a chargesheet u/s 302 IPC has been filed against Bholu in the Ld. ASJ Court at Gurugram on 05.02.2018 since a case of commission of murder of Prince on 08.09.2017 is made out against Bholu. The copy of the chargesheet, statement of witnesses and copies of documents have already been supplied to Bholu through his father.*

13. *That aggrieved by the orders issued by Learned Juvenile Justice Board, Gurugram dated 20.12.2017 for trying the Bholu/Appellant as "Adult" and order of Learned Addl. District Sessions/Children Court, Gurugram dated 21.05.2018 upholding the said order of JJB, Gurugram, Bholu/Appellant filed a revision petition before the Hon'ble High Court of Punjab and Haryana, Judicature at Chandigarh in Crl. Rev. No.2366/2018. On 11.10.2018 Hon'ble High Court of Punjab and Haryana, Judicature at Chandigarh set-aside the above both orders and remanded back the case to Juvenile Justice Board, Gurugram for fresh assessment u/s 15 of JJB Act. The Hon'ble Supreme Court has granted permission to file SLP against the said order dated 11.10.2018 of this Hon'ble Court vide order dated 19.11.2018 and directed parties i.e. JCL Bholu and CBI to file counter affidavit in the said SLP. In the meantime, both the parties was directed to maintain status quo, the matter is listed on 21.01.2019 before the Hon'ble Supreme Court. Copy of the order is annexed as Annexure (A)."*

Counsel for the State has argued that from the statement recorded by the Probation Officer, all the teachers and staff of the school, it was found that the petitioner's attitude towards the Class was aggressive; he used to remain upset most of the time as he has disclosed

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this fact to his music teacher; he was short-tempered and shouted over other children; a low average student in study; found under the influence of liquor.

Counsel for respondent No.2/CBI has argued that in the list of witnesses, apart from the parents of the deceased student, the sister of the deceased is cited as Witness No.3, who is aged about 14 years as per Aadhar Card and there are other witnesses, thus, there is every possibility for the petitioner to tamper with the prosecution evidence, if he is released on bail.

Counsel for respondent No.2 – CBI has further submitted that since the petitioner himself has stated before the Hon'ble Supreme Court that he has filed an application as a juvenile but wants it to be decided as an “Adult”, there will be no applicability of Section 12 of the Act as in case the petitioner is to be treated as an “Adult”, therefore, mere long custody of the petitioner, is not a ground for bail as life punishment is provided under Section 302 of the Indian Penal Code.

Counsel for respondent No.2 – CBI has also argued that proper hygiene condition are maintained in the protection home and on the asking of the petitioner, this Court on two occasions has directed for constitution of Medical Board and as per the opinion of the Medical Board from Kalpana Chawla Government Medical College, Karnal, Department of Psychiatry dated 10.09.2019, the following observations are made:-

“Kindly refer to letter from your office on the subject cited above (copy attached)

Juvenile Aryan s/o Vinod, 18/M, FIR

No.250/2017u/s 302 IPC P.S. Bhondsi (Gurugram) attended Psychiatry OPD of Kalpana Chawla Govt. Medical College, Karnal on 30.08.19 vide OPD No.915541 and remained admitted from 30.08.19 to 10.09.19 in psychiatry indoor vide CR No.22592 under the medical board of the following doctors:

Dr. Gaurav Thami, Associate Professor, General Surgery

Dr. Nikhil Govil, Assistant Professor, General Medicine

Dr. Savita Chahal, Assistant Professor, Psychiatry

He was observed, assessed and investigated during the period of his ward stay. Medical records obtained from Superintendent, Place of Safety, Madhuban were also reviewed. On the basis of history, ward observation, Physical and Mental Status Examination and investigations, which included haematological, biochemical, radiological and psychological assessment) the medical board is of the opinion that there is nothing significant at present to suggest that Juvenile Aryan is suffering from any overt or serious physical and mental illness leading to weight loss. His BMI (22.8 Kg/sq. m) is also within normal limits. He also gained a total of 2.2 Kg weight during the period of admission.

Further Recommendations of the board:

- 1. Adequate nutrition*
- 2. Supervision of nutrition by Jail staff*
- 3. Weekly weight charting.*
- 4. He has been suggested to use spectacles (Right eye : Plano 6/6, Left eye: -0.5 x 180 degree) as advised by ophthalmologist.*
- 5. He is advised to take Tab Cefixime 200 mg BD, Tab. B. complex I OD, Fusidic Acid cream for local application BD for 5 days*

*w.e.f. 10.09.19 as recommended by
dermatologist for folliculitis.*

*This is for your information and necessary action
please.*

Sd/- 10.09.19

Sd/-

Sd/-

Dr. Gaurav Thami

Dr.Nikhil Govil

Dr.Savita Chahal

Associate Professor

Associate Professor

Associate Professor

Deptt. of General Surgery

Deptt. Of General Medicine

Deptt of Psychiatry

KCGMC, Karnal

KCGMC, Karnal

KCGMC, Karnal”

Counsel for respondent No.2 – CBI has further submitted that again the petitioner was examined by the Medical Board, constituted by Civil Surgeon, Karnal on 25.09.2019, wherein the following observations was made:-

“Juvenile Bholu s/o Vinod, 18/M attended the OPD of District Civil Hospital vide UHID No.416000027828 on 26.09.2019. He was examined by duly constituted medical board comprising of following doctors:

Dr. Om Pal Saini

Dr. Nidhi

Dr. Ashish Aggarwal

He was interviewed and history was also obtained from Karan Sharma (Pharmacist at Place of Safety, Madhuban). His old treatment records were also reviewed. Medical records from the place of safety were also reviewed.

His biochemical, hematological, ECG and radiological investigations were done at DCH, Karnal on 27.09.2019 and were within normal limits. (Reports attached). His wight was 66 Kg and height 170 cm on 26.09.2019, corresponding to BMI of 22.8.

Medical report from KCGMC, Karnal vide No.KCGMC/Psy/19/175 dated 10.09.2019 also did not

report any overt or serious medical/mental illness.

Based on all the above findings, the board is of the opinion that Juvenile Bholu s/o Vinod is not suffering from any serious or overt medical/psychiatric illness at present.

This is for your information and necessary action please.

Sd/-

Dr. Om Pal Saini

Physician,DCH, Karnal

Sd/-

Dr. Nidhi

Pediatrician,DCH,Karnal

Sd/-

Dr. Ashish Aggarwal

Psychiatrist,DCH,Karnal”

Counsel for respondent No.2 – CBI has, thus, argued that the petitioner is not suffering from any serious or overt act, medical/psychiatric illness. Counsel for respondent No.2 – CBI has further referred to the affidavit of the Superintendent, Place of Safety Madhuban, Karnal, which also suggests the same thing.

Counsel for respondent No.2 – CBI has relied upon the judgment “***State through CBI vs Amaramani Tripathi***”, 2005(4) RCR (Criminal) 280, to submit that bail be not granted where there are *prima facie* ground to believe that the accused has committed the offence; considering the nature and gravity of the charge, severity of punishment in the event of conviction and the danger of accused absconding or fleeing, if released on bail; character, behaviour, means, position and standing of the accused; likelihood of the offence being repeated; reasonable apprehension of the witnesses being tampered with and danger of justice being thwarted by grant of bail.

Counsel for the complainant has argued that since for the purpose of deciding this application, the petitioner is to be treated as an “Adult”, the petitioner cannot be granted the concession of bail. It is further submitted that the petitioner belong to a very influential family

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and the manner in which the State Police has conducted the investigation, prior to its transfer to CBI, demonstrates that the family of the petitioner tried to transpose Ashok Kumar, conductor of the bus as an accused in place of the petitioner.

Counsel for the complainant has further submitted that some of the witnesses are/were students and since the petitioner is facing allegation of committing heinous crime of murder of a 07 year old minor child in a very barbaric manner by cutting his throat and then tried to demolish the evidence, no sympathy should be shown. It is further argued that there is every possibility that the petitioner may try to influence the prosecution witnesses as the minor sister of the deceased is also cited as one of the prosecution witness apart from the parents.

Counsel for the complainant has also submitted that it is the petitioner's side, who is not allowing the trial to conclude as they have challenged every order passed by the Courts below.

Counsel for the complainant has submitted that CRR No.635 of 2018 is filed by the petitioner praying for default bail, CRR No.280 of 2018 is filed by the petitioner, challenging the order vide which it was directed that the petitioner should give his sample fingerprints, CRA-S No.1549-SB of 2018, is filed dismissing the application filed by the petitioner under Rule 10(5) of the Rules, dismissing the application for providing the statement and all these petitions are pending. Even CRA-S No.646-SB of 2018, was filed praying for default bail which was dismissed by this Court on 06.06.2018. Therefore, it is submitted that the delay cannot be

attributed to the prosecution.

In reply, learned senior counsel for the petitioner has argued that CRR No.635 of 2018 praying for default bail becomes infructuous as the petitioner is to be treated as an “Adult”.

After hearing the learned counsel for the parties, I find no ground to grant the concession of bail to the petitioner for the following reasons:-

(a) Though it is well settled principle of law that an application for bail filed by a person who is above of 16 years of age and is alleged to have committed a heinous crime as per Section 2(33) of the Act, pending preliminary assessment by the Board, can be allowed however, this Court is not inclined to grant any relief to the petitioner, in view of the order dated 28.02.2019 passed by the Hon’ble Supreme Court, directing that for deciding the bail application, the petitioner be treated as an “Adult”, therefore, there is little scope for this Court to find out whether the petitioner can be granted the relief under Section 12 of the Act.

(b) The Board and the Appellate Court have passed a detailed order declining the concession of bail to the petitioner in view of the proviso to Section 12(1) of the Act and this Court find no reason to form a different opinion.

(c) The arguments raised by learned senior counsel for the petitioner that the petitioner is not kept in

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a congenial atmosphere at Children's Home and is facing medical problem, are not proved from the two reports of the Medical Board stating that the petitioner is not facing any serious problem/illness and rather it is noticed that the petitioner is gaining weight.

(d) The delay in disposal of the trial on account of the pendency of bail/revision/SLP before the Higher Courts, wherein status quo has been ordered on 19.11.2018, cannot be taken as a ground to grant the concession of bail to the petitioner.

(e) The prosecution has cited certain witnesses, who are minors including the sister of the deceased and therefore, possibility of tampering the evidence, cannot be ruled out, at this stage in view of the totality of circumstances and the affidavit filed by the CBI.

In view of what has been discussed hereinabove, finding no merit, this revision petition is **dismissed**, accordingly.

Nothing observed in this order or in the orders of the Courts below shall have any bearing on merits of the case.

(ARVIND SINGH SANGWAN)
JUDGE

30.06.2020

yakub

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No