



ITEM NO.31

COURT NO.7

SECTION II-B

**S U P R E M E C O U R T O F I N D I A**  
**RECORD OF PROCEEDINGS**

Petition(s) for Special Leave to Appeal (CrI.) No. 8691/2021

(Arising out of impugned final judgment and order dated 06-10-2021 in CRAS No. 443/2021 passed by the High Court Of Punjab & Haryana At Chandigarh)

MASTER BHOLU (IMAGINARY NAME)

Petitioner(s)

VERSUS

CENTRAL BUREAU OF INVESTIGATION &amp; ANR.

Respondent(s)

Date : 20-10-2022 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DINESH MAHESHWARI  
HON'BLE MR. JUSTICE J.K. MAHESHWARI

For Petitioner(s) Mr. Manan Kumar Mishra, Sr. Adv.  
Mr. Durga Dutt, AOR  
Ms. Anjul Dwivedi, Adv.  
Mr. Jai Girdhar, Adv.  
Mr. Rohit Priyadarshi, Adv.  
Mr. Upendra Narayan Mishra, Adv.  
Mr. Priyanshu Upadhyay, Adv.  
Mr. Vaibhav Shukla, Adv.  
Mr. Aditya Kumar, Adv.

For Respondent(s) Mr. Vikramjit Banerjee, ASG  
Ms. Swati Ghildiyal, Adv.  
Ms. Rukhmini Bobde, Adv.  
Mr. Sughosh Subramanyam, Adv.  
Ms. Shruti Agarwal, Adv.  
Ms. Janhvi Prakash, Adv.  
Mr. Kartik Dey, Adv.  
Mr. Arvind Kumar Sharma, AOR  
  
Mr. Sushil K. Tekriwal, Adv.  
Dr. Mamta Tekriwal, Adv.  
Mr. Rajesh Kumar Chaurasia, AOR

UPON hearing the counsel the Court made the following  
O R D E R

We have heard learned counsel for the parties at some length,

particularly in view of the questions sought to be raised by the learned counsel appearing on behalf of the petitioner in this matter.

It has been strenuously argued by Mr. Manan Kumar Mishra, learned senior counsel for the petitioner, with reference to the scheme of the Juvenile Justice (Care and Protection of Children) Act, 2015 ['the Act of 2015'] as also the decisions of High Court of Delhi in Bail Application No. 2510 of 2020 dated 19.10.2020 and Gauhati High Court in W.P. (C) No. 1482 of 2008 dated 24.08.2010, that even if it has been ordered that the petitioner is to be tried as an adult (though learned counsel would submit that such an order is subject to challenge by the petitioner) yet, his bail plea is required to be examined only in terms of Section 12 of the Act of 2015 for the fact that he was a "*child*" within the meaning of Section 2(12) of the Act of 2015 on the date of incident. According to the learned counsel, at the most, the petitioner could be said to be answering to the description of "*a child in conflict with law*" in terms of Section 2(13) of the said Act but, in any case, he is entitled for consideration of his bail plea in terms of Section 12 thereof.

*Per contra*, it has been strenuously argued by Mr. Vikramjit Banerjee, learned Additional Solicitor General appearing for the Central Bureau of Investigation that in any event, for the reason that the petitioner has already attained the age of eighteen years and in fact, he is now in twenty-one years of age, his present bail plea cannot be considered with reference to Section 12 of the Act of 2015.

Mr. Sushil K. Tekriwal, learned counsel appearing for the complainant has, apart from other submissions, particularly referred to the order dated 02.09.2020 read with the order dated 29.10.2020, as passed by a 3-judge bench of this Court in SLP (Cr1.) No. 3350 of 2020, and even the order passed prior to the said order wherein this Court consistently observed that for the purpose of consideration of the bail application, the petitioner was required to be treated as an adult.

It is submitted that the relevant factor now is that after remand of the matter by this Court by way of the order dated 13.07.2022 in Criminal Appeal No. 950 of 2022, the Juvenile Justice Board, Gurugram has finally made the assessment that the petitioner, who was about sixteen years and four months of age on the date of incident, was required to be tried as an adult.

In this view of the matter, learned counsel appearing for the complainant submits that the relaxed consideration in terms of Section 12 of the Act of 2015 is not available to the petitioner and it would be a different matter if he moves for regular bail, in terms of Section 439 of the Code of Criminal Procedure, 1973, where the parties may have their own submissions to make with reference to the merits of the case.

We have taken note of all the facts and circumstances of the case as also the issue raised but, as at present, we have not as such entered the merits of the bail plea of the petitioner because that consideration would depend on the answer to the threshold question as to whether the petitioner is entitled to maintain his bail plea under Section 12 of the Act of 2015 or not. The

submissions as made in that regard, do give rise to the substantial points to be determined by this Court. It also goes without saying that if the answer to this point is in favour of the petitioner, then his bail plea is to be considered in terms of Section 12 of the Act of 2015 though in that regard too, the proviso to subsection (1) of Section 12 of the Act of 2015 would come into operation. However, that would be a stage later and dependent on the answer to the first point for determination.

In the aforesaid view of the matter, we are inclined to grant leave in this matter, so as to consider the relevant issues appropriately.

Accordingly, leave granted.

Learned senior counsel for the petitioner-appellant has prayed for grant of interim relief with the submissions that the petitioner-appellant, who was about sixteen years and four months of age at the time of the alleged incident, is now over twenty-one years of age and has been continuously in detention since 07.11.2017, almost for about five years. It is submitted that the petitioner-appellant may be ordered to be released on appropriate terms and conditions.

Opposing this prayer, the learned Additional Solicitor General appearing for the Central Bureau of Investigation has submitted that neither the conduct of the petitioner-appellant nor of his father/guardian could be said to be conducive to further proceedings in the matter and in that regard, has particularly referred to the fact that the father of the petitioner-appellant was found not comporting himself appropriately before the Juvenile

Justice Board wherefor, the presiding officer of the Juvenile Justice Board had to make a reference for drawing up contempt proceedings.

Learned counsel for the complainant has referred to the gruesome nature of the crime in question where the innocent child was killed by slitting his throat. The learned counsel has also submitted that a substantial number of witnesses in this case are too vulnerable, including the sister of the victim-child, who is presently sixteen years of age. It is submitted that when the parties are living in the vicinity or nearby, release of the petitioner-appellant may cause impediments in the fair and proper trial of the matter. Further, he submitted that rather than granting him the concession of release, trial of the case in question could be expedited with the requirement of time-bound completion.

We have pondered over all the facts and circumstances of the case and the submissions made by learned counsel for the parties.

As noticed in the first part of this order, the question remains to be examined as to whether the bail plea of the petitioner-appellant could be considered in terms of Section 12 of the Act of 2015 or not. However, fact of the matter remains that the liberty of the petitioner-appellant in the face of the accusations of the present case has been curtailed and for that matter, he is in detention for a period of one month less five years.

Even while looking at the serious nature of the crime in question but without making any other comment on the merits of the

case either way, the requirement of balancing the competing claims and equities cannot be ignored. For that matter, we cannot ignore the fact that the petitioner-appellant had been of the age of sixteen years and four months when he was taken in detention and at present, he is twenty-one years of age. Although, he is at present housed in correction/observation home but and yet, his continued detention until completion of the trial may carry its own adverse effects. On the other hand, the apprehensions voiced on behalf of the respondents cannot be ignored either.

Therefore, even while we are inclined to grant indulgence to the petitioner-appellant by way of interim bail, we propose to put him to specific terms and conditions while providing for expeditious proceedings in the trial.

Accordingly, the prayer for interim relief is granted for the time being in the manner that until further orders of this Court and by way of interim measure, the petitioner-appellant may be released on bail on such terms and conditions as may be imposed by the learned Sessions Judge, Gurugram.

It is, however, specifically provided that the petitioner-appellant shall continuously remain under the supervision of the probationer officer or any other person, fit for the purpose, as may be appointed by the learned Sessions Judge in that regard.

Further to that, the petitioner-appellant and his parents and everybody connected with him would be expected not to create any hindrance in the proper progression of the trial of the case; and for that matter, not try to contact or communicate with any of the witnesses related with this matter.

If there be any shortcomings in the conduct on the part of the petitioner-appellant, it shall be permissible for the probationer officer or the person appointed by the Sessions Judge, to make a report in that regard to the Sessions Judge concerned, who would be expected to immediately forward the report to this Court along with his comments.

However, we make it clear that pendency of this appeal shall not be of any impediment in further progress of the trial.

We also make it clear that the expression "*trial*" has been used in this order at the present stage in view of the order passed by the Juvenile Justice Board, holding that the petitioner-appellant is to be tried as an adult. Obviously, this expression is, otherwise, not decisive of the question pertaining to the proceedings under Section 15 of the Act of 2015 and any challenge to the order of the Juvenile Justice Board shall be examined on its own merits.

List this matter for hearing in the month of January, 2023.

(SNEHA DAS)  
SENIOR PERSONAL ASSISTANT

(RANJANA SHAILLEY)  
COURT MASTER (NSH)