

CNR No.HRGR01-002110-2021.

CIS No.BA-566-2021.

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**In the court of Additional Sessions Judge, at Gurugram
(Presided Over by Sh. Amit Sahrawat)**

Bail application No.	31 of 25.02.2021.
CNR Number	HRGR01-002110-2021.
CIS Number	BA/566/2021.
UID No.	HR-0217.
Date of Order	22.03.2021.

Bholu (imaginary name) aged 19 years son of Sh. Vinod Kumar Raghav, R/o Defence Colony, Near Shiv Murti, Baluda Road, Sohna, District Gurugram, Haryana.

.....Applicant/ Juvenile in
conflict with law

Versus

Central Bureau of Investigation, Through the Superintendent of CBI , SC III,
CBI Headquarter, Delhi

FIR No.: 250 of 2017
U/Section : 302 IPC.
P. S. Bhondsi, Gurugram.
with RC -8(S) of 2017 under Section
302 IPC, SC-3 Lodhi Road, Delhi

**Application under Section 12 read with Section 18(3) of the Juvenile
Justice (Care and Protection of Children) Act 2015 for bail**

Argued by : Sh. Sandeep Aneja, Counsel for applicant.
Sh.Amit Jindal, Prosecutor for Central Bureau of Investigation,
assisted by Sh. Sushil K.Tekriwal, Counsel for the
complainant
Shri Vinod Raghav, father of the applicant in person

ORDER

The applicant namely Bholu son of Vinod Kumar Raghav has come to this Court for granting bail and moved this application under Section 12 read with Section 18 (3) of the Juvenile Justice (Care and Protection of

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Children) Act 2015 (herein after termed as Act) in the criminal case bearing FIR No. 250 of 2017 U/Sections 302 IPC, P. S. Bhondsi, Gurugram with RC -8(S) of 2017 under Section 302 IPC SC-3 Lodhi Road, Delhi.

2. **Though the maintainability of the instant application for bail and the jurisdictional competency of this court to decide it are the vehemently contended questions here, yet such issues may also not be determined by this court without writing down the arguments raised from both the sides in this regard.** Even the factual background of the case is also required to be mentioned here.

3. As per allegations, found recorded in the first information report initially registered in this matter, Prince was a student of second class in Ryan International School Bhondsi. His father had left him and his sister at school on 8.9.2017 at 8.00 am. At 8.10 am, a telephonic call was received from the school staff that Prince had been taken to Badshahpur Hospital due to profuse bleeding and he had received a cut on his neck. Later, it was told by one of the staff member of the school that Prince was taken to Artemis Hospital. When the father of the child reached at Artemis hospital, the child Prince was found in emergency ward. Later, the child died due to injuries caused on his neck. On the basis of the complaint made by the father of the deceased child, the case was registered by the State police.

4. After registration of the first information report, the investigation was initiated by the Haryana Police. One Ashok Kumar son Ami Chand was arrested. However, through the State Notification dated 17.9.2017, issued by

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Ministry of Personnel, Public Grievances and Pension (Department of Personnel and Training) New Delhi dated 22.9.2017, investigation of the case was handed over to Central Bureau of Investigation (CBI). The case was re-registered as bearing no. RC-8(S) /2017/ SC III/ New Delhi on 22.9.2017 which was the reproduction of the earlier FIR. CBI arrested the applicant and produced him before the Juvenile Justice Board on 7.11.2017. The applicant was the student of 11th standard in the same school. Since then, the applicant is lying in custody and therefore, the applicant has moved the instant bail application.

5. The earlier factual background of the whole matter, in the form of chain of events, may be stated as follows :

(i) The Juvenile Justice Board, after making a preliminary assessment, observed vide order dated 20.12.2017 that the juvenile in conflict with law will be tried as an adult .

(ii) The appeal no. 66 of 2018, against that order dated 20.12.2017, was dismissed by the Learned Sessions Court vide order dated 21.5.2019.

(iii) In the revision petition no. 2366 of 2018 decided by the Hon'ble Punjab and Haryana High Court, the matter was remanded back to the Juvenile Justice Board to conduct a fresh preliminary assessment under Section 14 of the Act.

(iv) That very order was challenged by the complainant before the Hon'ble Supreme Court in SLP No. 10123 of 2018. An order dated 19.11.2018 directing to maintain the status quo in the matter was passed by the Hon'ble Supreme Court and notice was directed to be issued to the opposite party.

That order dated 19.11.2018 passed by the Hon'ble Supreme Court still stands and the proceedings before the Juvenile Justice Board are on the same stage as they were.

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6. As far as application for bail earlier moved by the applicant is concerned, the same has also been dealt with up to the Hon'ble Supreme Court in the following manner :

(i) The first bail application moved under Section 12 of the Act was dismissed by the Juvenile Justice Board vide order dated 30.10.2018.

(ii) His bail application was also dismissed by the learned Sessions court vide order dated 5.11.2018.

(iii) The bail application was also dismissed by the Hon'ble High court of Punjab and Haryana vide order dated 30.6.2020 in view of the order dated 28.2.2019 passed by the Hon'ble Supreme Court in **IA No. 155572 of 2019 when the Hon'ble Supreme Court directed to decide the question of granting bail to the applicant by way of treating him as an adult.**

(iv) The bail application of the applicant was also dismissed by the Hon'ble Supreme Court vide order dated 2.9.2020 passed in SLP No. 3350 of 2020. However, the applicant preferred a review petition of the same which is allegedly still pending before the Hon'ble Supreme Court.

7. The learned counsel Sh. Sandeep Aneja appearing for the applicant/Juvenile in conflict with law has argued the applicant is lying in custody since 7.11.2017 without any reason as there is no incriminating evidence in charge sheet against the applicant filed by the Central Bureau of Investigation. Even the sanction for prosecuting the four police officials of State police has been declined by the Government vide order dated 19.2.2021 and this decline of sanction itself shows the genuineness of the investigation earlier made by the state police when one of the another person had been booked as an accused in this matter. It was also argued that CBI has falsely implicated the applicant in matter in hand without having any evidence. It was

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also argued that the applicant is entitled to bail under Section 12 of the Act and the bail application may be moved before the children court under Section 12 of the Act even if the juvenile is being tried as an adult. The learned counsel has cited the authority titled as **Lalu Kumar @ Lal Babu @ Lallu Vs State of Bihar** Criminal Appeal no. 2117 of 2019 decided by the Hon'ble Patna High Court on 9.9.2019 in this regard. It was also argued that the essential provisions of the the Act have not been followed in matter in hand by CBI and the juvenile in conflict with law has not been interrogated by the Child Police Welfare Officer (CPWO) to be designated as such under the Act.

8. The learned Counsel Sh. Sandeep Aneja also argued that the juvenile in conflict with law is lying in custody for last more than 3 years and the inquiry has been stayed before the Juvenile Justice Board with the orders dated 19.11.2018 passed by the Hon'ble Supreme Court in SLP No. 10123 of 2018. The Hon'ble Supreme Court has merely stayed the assessment process pending before the Juvenile Justice Board and the bail proceedings have not been stayed. Even the Hon'ble High Court had also decided the bail application of the applicant vide order dated 30.6.2020 i.e after passing of the status quo order by the Hon'ble Supreme Court. Therefore, there is no bar on the powers of this court to grant the concession of bail to the applicant. It was also argued that the applicant has no remedy at all except to seek bail from the children court as he is lying in custody despite of being a juvenile on the date of alleged commission of offence. The learned counsel has also the authorities titled as **Vicky Vs State of U.T. Chandigarh** CRM-M 21388 of 2020 decided

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by Hon'ble Punjab and Haryana High Court on 31.8.2020, **Happy Vs State of Haryana** CRM-M3049 of 2018 decided by Hon'ble Punjab and Haryana High Court on 26.10.2018, **Tejram Nagrachi Vs State of Chhattisgarh** MCRC No. 8523 of 2016 decided by Hon'ble Chhattisgarh High Court on 5.4.2019 and **Vishal Vs State of UP and Another** Criminal Revision No. 3907 of 2019 decided on 9.7.2020 by Hon'ble Allahabad High Court and **Radhika Vs State of UP** Criminal Appeal No. 4418 of 2019 decided by the Hon'ble Allahabad High Court on 5.8.2019.

9. It was further argued by the learned counsel Sh. Sandeep Aneja that the learned counsel of the complainant may only advance his arguments in assistance of the learned Public Prosecutor but may not legally file the written reply as such a reply has already been filed by the prosecution. It was urged that the learned counsel of the complainant may not be permitted to take command of the case of the prosecution and therefore, their reply may not be considered by this court. The learned counsel also cited the authority titled as **Rekha Murarka Vs The State of West Bengal and Another**, Criminal Appeal no. 1727 of 2019 decided by the Hon'ble Supreme Court on 20.11.2019 in support of his such contention.

10. The learned Prosecutor appearing for the Central Bureau of Investigation Sh. Amit Jindal argued that once the application for bail of the applicant has already been dismissed up to the Hon'ble Supreme Court, then such bail application may not be considered by this court without any change in circumstances. No such change in circumstances has been shown by the

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applicant before this court. Mere decline of sanction of some police officials by the state Government may not be a change in circumstances. Even such order of the Government has also been challenged before the Hon'ble High Court in CRM-M No. 10268 of 2021.

11. The learned Counsel Sh. Sushil K. Tekriwal appearing for the complainant also vehemently argued that the complainant, being a victim, whose son has been brutally murdered, is entitled to contest the instant application for bail filed by the applicant. Not only advancing the oral arguments, the complainant is having a legal right to file the written reply separate from the reply of the prosecuting agency. Even the complainant has also been allowed to join the proceedings before the Hon'ble Supreme Court through which the inquiry before the Juvenile Justice Board has been stayed. The learned counsel Sh. Sushil K. Tekriwal also urged that he will cite a number of authorities on this point.

12. The learned counsel Sushil K. Tekriwal further argued that the application for bail may not be maintainable before this court as the inquiry has already been stayed before the Juvenile Justice Board vide order dated 19.11.2018 passed by the Hon'ble Supreme Court. Even the SLP No. 3350 of 2020 has also been dismissed by the Hon'ble Supreme Court vide order dated 2.9.2020 and the applicant has preferred a review petition against that order which is still pending there. In such circumstances, the matter again may not be raised before this court as being barred under the principle of res-judicata. The learned counsel also cited the authorities titled as **Pritam Singh and**

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Another Vs The State of Punjab AIR 1956 SC 415 and **Kishore Bhikansingh Rajput Vs Preeti Kishore Rajput** Writ Petition No. 7502 of 2006 decided by the Hon'ble Bombay High Court on 7.2.2007 in support of his such arguments.

13. It was also argued by the learned counsel Sh. Sushil K. Tekriwal that the applicant is habitual of filing application for bail on one ground or the other and several bail applications have been moved earlier by him in different courts which all have been dismissed. Nor this fact has been disclosed by the applicant in the instant bail application. It was also urged that once the inquiry is pending before the Juvenile Justice Board, such an application may not be maintainable before the children court. It was further argued that even there is no such change in circumstances and subsequent applications for bail may not be considered without such change in circumstances.

14. I have heard the arguments advanced at length advanced by the learned Counsel Sh. Sandeep Aneja appearing for the applicant, the learned Prosecutor Sh. Amit Jindal appearing for the CBI and the learned Counsel Sh. Sushil K. Tekriwal appearing for the complainant. I also perused the whole record.

15. This issue has been hotly contested by both the sides before this court, whether the complainant, being a victim, may file a written reply to the application for regular bail particularly when the prosecuting agency has already filed reply. The learned counsel appearing for the applicant has urged that there is no such provision in Code of Criminal Procedure 1973 which

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gives such right to the complainant to file the written reply to the bail application. It was argued by him that though the complainant may advance the arguments only to assist the prosecutor, yet no written reply can be filed by him. **Per contra**, the learned counsel appearing for the complainant also urged that the complainant is a victim being father of the deceased and the victim is legally entitled to protect his rights.

16. In the authority **Rekha Murarka (supra)**, the question before the Division Bench of Hon'ble Supreme Court was, whether the counsel of the complainant may be allowed to cross examine the witnesses after the Public Prosecutor. In the mentioned case, the Hon'ble Supreme Court widely discussed the relevant provisions of Code of Criminal Procedure like Section 24, Section 225, Section 301 and Section 302 which contain the importance of Public Prosecutor in conducting a criminal trial as well as the role which may be played by the complainant in such trial. In para no. 12.1 of the judgment, it has been recorded by the Hon'ble Supreme Court that :

The use of the term 'assist' in the proviso of Section 24 (8) is crucial and implies that victim's counsel is only intended to have a secondary role qua the Public Prosecutor.

In para no. 12.4, it was further held that :

If the victim's counsel feels that a certain aspect has gone unaddressed in the examination of the witnesses or the arguments advanced by the Public Prosecutor, he may route any questions or points through the Public Prosecutor himself. This would not only preserve the paramount position of the Public Prosecutor under the scheme of the Cr.P.C but also ensure that there is no inconsistency between the case advanced by the Public Prosecutor and the victim's counsel.

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17. In the matter in hand, advancing the arguments by the learned counsel appearing for the complainant after the learned Public Prosecutor has not even been opposed by the learned counsel appearing for the applicant/juvenile in conflict with law. Only filing of written reply by the complainant has been objected. Apart from this, there is hardly any plea or point which has not been orally argued by the learned counsel appearing for the complainant, which is mentioned in his written reply. Meaning thereby, the learned counsel appearing for the complainant Sh. Sushil Kumar Tekriwal has covered almost all the points in his arguments which are written in his reply. Therefore, in view of the dictum of the authority **Rekha Murarka (supra)**, even if this court does not consider the written reply of the complainant and only considers the oral arguments advanced by the learned counsel appearing for the complainant after the arguments of the learned Prosecutor of the CBI to assist him, which has not even been objected from the side of applicant, even then that is not going to affect the fate of the instant application for bail.

18. The earlier bail applications of the applicant have already been dismissed up to the Hon'ble Supreme Court. Whether the applicant should be considered as a juvenile or an adult for the purpose of trial, that question is still pending for determination before the Hon'ble Supreme Court in SLP No. 10123 of 2018 and vide order dated 19.11.2018, the Hon'ble Supreme Court has directed to maintain the status quo. In such circumstances, this application for bail is not maintainable in any case before this court. If the applicant is considered a juvenile, then such bail application should be moved before the

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Juvenile Justice Board, Gurugram. On the other side, if the applicant is considered as an adult, then such bail application should be moved before the Special Sessions Court at Panchkula designated in the State of Haryana for the cases investigated by CBI as the instant case has also been investigated by CBI. Hence, in both the eventualities, the instant application for bail may not be maintainable before this court.

19. Even otherwise also, once the bail application of the applicant has already been dismissed upto the Hon'ble Supreme Court, then the another bail application may not be moved by the applicant and considered by this court in a routine manner. Rather, the applicant is required to show the subsequent events or any other change in circumstance which has allegedly taken place after the dismissal of his bail application earlier. Only on the basis of changed circumstances or any such subsequent event, the applicant may seek the concession of regular bail from this court. The law is quite clear in this regard.

20. Here, in matter in hand, the applicant has moved the instant application for bail on the ground that he is lying in custody since 7.11.2017 and recently the request for granting the sanction of prosecution of four state police officials, sought by the Central Bureau of Investigation, has been declined by Government vide order dated 19.2.2021. It is alleged that such decline of sanction goes to suggest that the investigation earlier made by the State police in the matter in hand was genuine and Central Bureau of Investigation has falsely implicated the applicant/juvenile in conflict with law without any basis. However, mere decline of sanction of four state police

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officials by the Government is no ground to seek the bail from this court as such a decline is merely an administrative action of the Government which may not be taken by this court as a falsification of the entire case of Central Bureau of Investigation. Such a decline of sanction by Government is not a change in circumstances nor such a subsequent event to consider this another bail application. Even such order of Government dated 19.2.2021 has also been challenged before the Hon'ble Punjab and Haryana High Court in CRM-M no. 10268 of 2021.

21. As an inference of the above discussion, this court is having a view that the instant bail application is neither maintainable before this court, nor any other ground has been made out to consider such request of granting bail. Even the inquiry, whether the applicant should be treated by Juvenile Justice Board as juvenile, or whether he should be tried as an adult, has still not been concluded and the same is stayed under the orders passed by the Hon'ble Supreme court dated 19.11.2018 in SLP No.10123 of 2018. In such circumstances, the application for bail filed by the applicant is hereby dismissed. The other authorities cited by the learned counsel appearing for the applicant/juvenile in conflict with law are not applicable here as his application for bail have already been considered and dismissed on merits up to the Hon'ble Highest Court of this country and no such change in circumstance has been shown to be made out before this court, making him entitled to concession of bail.

22. Nothing observed by this court in the present order will be taken

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as affecting the merits of the case during trial in any manner. File be consigned to the record room after due compliance.

Announced.
March 22nd, 2021.
(Rekha Sharma)

(Amit Sahrawat)
Additional Sessions Judge,
Gurugram, UID No.HR0217

Note : All the pages of this Order has been checked and signed by me.

(Amit Sahrawat)
Additional Sessions Judge,
Gurugram, UID No.HR0217