

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Criminal Revision No. 140 of 2012.

Date of decision: 31.8.2012

Uzar Basin S/o Bashir Ahmad Bara R/o Seshigari Mohalla Khanyara at present resident of Colony Wanihama, Tehsil Hazratbal District Srinagar J&K, through his mother and natural guardian Khalida Akhtar W/o Bashir Ahmad.

...Petitioner.

Versus

State of Himachal Pradesh.

....Respondent.

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting ? No

For the Petitioner : Mr. Nimish Gupta, Advocate

**For the Respondent : Ms. Ruma Kaushik, Addl. A.G. with
Mr. Vinod Thakur, Dy. A.G.**

Kuldip Singh, Judge (oral)

This revision has been filed against the order dated 18.5.2012 passed by Additional Sessions Judge (II), Kangra at Dharamshala in bail application No. 108-K/2012 and order dated 3.5.2012 passed by Principal Magistrate, Juvenile Justice Board, Kangra District at Dharamshala in bail application No. 7/XXII/2012.

2. It has been stated that FIR No. 11 of 2012 has been registered at Police Station, Mcleodganj, Dharamshala on 29.2.2012 under Sections 302, 201, 379, 34 IPC. It has been stated that petitioner

¹ Whether reporters of Local Papers may be allowed to see the Judgment ? yes

surrendered to the police on 7.3.2012 in Srinagar, J and K. The petitioner has been sent to observation home, Una on 23.3.2012 and since then the petitioner is in observation home. It has been stated that petitioner is juvenile aged about 16 years.

3. The petitioner filed bail application before the Juvenile Justice Board, Dharamshala which was dismissed on 3.5.2012. The petitioner moved another application before the Additional Sessions Judge (II), Kangra at Dharamshala, which was dismissed on 18.5.2012. The petitioner has filed the revision and has stated that he is innocent and has been falsely implicated. The Board and Court below failed to take into consideration that the petitioner is a juvenile and for the purpose of bail Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (for short 'Act') is attracted. The Board and Court have not appreciated, rather misconstrued, mis-interpreted the mandate of Section 12 of the Act. The submission has been made for setting aside orders dated 18.5.2012 and 3.5.2012 with further submission to release the petitioner on bail.

4. Heard and perused the record. The learned counsel for the petitioner has submitted that the Board and Court below have erred in not releasing the petitioner on bail, who is a juvenile. The petitioner is entitled to release under Section 12 of the Act. There is no material on record that his release will bring him into association with any known criminal or expose him to moral, physical or psychological danger or defeat the ends of justice. The learned Additional Advocate General has submitted that there are serious allegations against the petitioner. He

has been rightly kept in the observation home in accordance with Section 12 of the Act. She has supported the impugned orders.

5. Tenzin Dodyu reported that on 29.2.2012 at about 7.45 a.m. when the door was opened with extra key, the complainant saw a boy lying dead on the floor. The rapat No. 5 was entered in the roznamcha, thereafter statement of Tenzin Dodyu was recorded under Section 154 Cr.P.C., who is running Kunga Guest House, Mcleodganj. He has stated that on 26.2.2012 a Kashmiri named Uzar Basin stayed in his Guest House, he was alone. On 29.2.2012 at about 7.45 a.m. the room occupied by Uzar Basin was found locked, he had not made the payment. The room was opened with duplicate key and he saw the dead body of a boy lying on the floor in a pool of blood. On this case was registered.

6. The investigation started. On 2.3.2012 deceased was identified Sanjay Kumar alias Billa resident of Village Darnu, Tehsil Dharamshala. It has come in the investigation that Uzar Basin and Antima Rani after committing the murder in the Car HP-01D-1710 of Sanjay Kumar took his mobile and other articles, committed theft and destroyed the evidence. Uzar Basin was arrested on 7.3.2012 at Srinagar. Antima Rani was arrested from Chandigarh on 21.3.2012. Uzar Basin is in observation home, Una since 23.3.2012. Uzar Basin and Antima Rani have committed the offence.

7. The learned counsel for the petitioner has relied **Prakash v. State of Rajasthan 2006 Cri.L.J.1373** where it has been held that bail to the juvenile cannot be refused on the ground of gravity of offence. It is for the prosecution to bring on record such material while opposing the

bail and to make out any of the grounds provide in Section 12 which may persuade the court not to release the juvenile on bail. In absence of any material or evidence of reasonable ground to believe that the juvenile, if released on bail, is likely to come into association with any known criminal or expose him to moral, physical or psychological danger, it cannot be said that his release would defeat the ends of justice. The learned counsel to this effect has also relied **Manoj v. State (NCT of Delhi) 2006 Cri. L.J. 4759.**

8. In the case in hand, the allegations are that after committing the offence the petitioner and co-accused absconded in the taxi of the deceased, they took away his mobile and other articles. The allegation is that in addition to commission of offence punishable under Section 302 IPC, the petitioner and his co-accused also committed theft and destroyed the evidence. The petitioner was arrested from Srinagar and co-accused from Chandigarh. The Additional Sessions Judge in the impugned order has observed that 30 knife injuries were found on the body of the deceased. The petitioner though is juvenile offender but at the same time he is mature enough. The petitioner is resident of Wanihama, Tehsil Hazratbal, District Srinagar, J and K. He moved out and came to Dharamshala from such a far away place, allegedly committed heinous offence with his co-accused. The Judicial notice of prevailing situation in J and K can be taken for limited purpose. The release of petitioner is likely to bring him into association with criminals. The release of petitioner would defeat the ends of justice.

9. The two Courts below have exercised the discretion of not releasing the petitioner on bail on the ground that in case the petitioner

is released on bail, it will expose him into association with other criminals and will expose him to moral, physical or psychological danger. The discretion exercised by the two Courts below in refusing bail cannot be said to be without jurisdiction. The petitioner has failed to make out a case of wrong exercise of jurisdiction. The challan has already been submitted in the Court. There is no merit in the revision, hence dismissed.

August 31, 2012.
(GR)

(Kuldip Singh),
Judge