

~~XXXXXXXXXXXXXXXXXXXX~~ FOR THROUGH HIS MOTHER VERSUS
STATE OF HARYANA

Present: Mr.Dheeraj Narula, Advocate
for the petitioner.

Mr.Vikas Bhardwaj, AAG, Haryana.

Mr.Aditya Sanghi, Advocate
for the complainant.

Case taken up through video conferencing.

First coming to the maintainability of the petition.

Learned counsel for the petitioner/accused has contended that in the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as the Act), there is no specific bar to filing of petition for grant of pre-arrest bail by a juvenile. Sections 10 and 12 of the said Act deal with grant of regular bail and not with pre-arrest bail, therefore saying that a petitioner should appear before Juvenile Justice Board for seeking bail is not proper.

Learned counsel has further argued that though in some of the cases this Court has taken the view that petition for pre-arrest bail by a juvenile is not maintainable and such judgments have been mentioned in order passed by the learned Additional Sessions Judge, Sirsa. Out of those, two of the petitions are CRM-M-29426-2018 titled 'Kamal Singh Versus State of Punjab' decided on 14.9.2018 and CRM-M-40284-2017 titled 'Ashokpreet Singh @ Showpreet Singh Versus State of Punjab' decided on 20.12.2017. But thereafter this Court has been granting this relief also. In that regard, he has referred to various judgments i.e. CRM-M-31678 of 2017 titled 'Gurpreet Mallan @ Gopi and another Versus State of Punjab',

decided on 12.10.2017, CRM-M-12040 of 2019 titled 'Kiratpal Singh Versus State of Punjab', decided on 3.5.2019, CRM-M-26047-2018 titled 'Kuldeep Singh Bholu Versus State of Punjab', decided on 15.6.2018 and CRM-M-9401 of 2019 titled 'Jaiveer Singh Versus State of Punjab', decided on 28.2.2019.

On the other hand, learned counsel appearing for the complainant has contended that such petition by a juvenile is not maintainable. In support of his submissions, he has also referred to various judgments i.e. *Amit Kumar Versus State of Haryana, 2013(5) RCR(Criminal) 836*, *Preetam Pathak Versus State of Chhattisgarh, 2015(147) AIC 529*, *Shahaab Ali (Minor) And Another Versus State of U.P., 2020(1) Crimes 276*, *Kamlesh Gurjar Versus State of M.P., 2020(1) RCR(Criminal)434*, *Sachin Versus State of Rajasthan, 2002(3) RCR(Criminal) 221* and *Tara Chand Versus State of Rajasthan, 2008(2) RCR(Criminal)764*.

Learned State counsel has also contended that this petition is not maintainable.

After hearing learned counsel for the parties, going through judgments referred by them and also going through the record and the relevant provisions of law, I find that the present petition cannot be held to be not maintainable. Juvenile Justice (Care and Protection of Children) Act, 2015 is a piece of social welfare legislation, which was enacted to take care of welfare of the children and to avoid their turning into hardened criminals. The basic purpose of this legislation was to ensure that a child under age of 18 some time coming in conflict with law by committing an offence is to be tried in a manner and under such environment, which may

take him to the path of reformation rather than allowing such children to mix up with criminals in the jail and themselves turning into hardened criminals. This is exactly the purpose of putting the juvenile in conflict with law, in the separate observation homes rather than in normal jail. Even if a juvenile in conflict with law is found to have committed some offence, then instead of awarding deterrent punishment, his rehabilitation and social integration is sought. If this special enactment is silent as regard a particular provision then that has to be read with the general law i.e. Criminal Procedure Code. An inference can certainly be not drawn that the legislature intended to debar a juvenile from seeking relief of pre-arrest bail. If it was also, then a specific provision in that regard would have been there on analogy of Section 18 The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, which clearly bars grant of pre-arrest bail to a person alleged to have committed offence under the said act. Even otherwise, the Juvenile Justice (Care and Protection of Children) Act, 2015 providing that children below age of 18 years coming within definition of juvenile be treated with kindness and compassion even if they are found in conflict with law. It could certainly be not intention of the legislature that such juvenile should be first apprehended and then produce before Juvenile Justice Board, in the process denying relief to a juvenile, which is available to the other persons, who are accused of heinous offences. The Apex Court in the judgment *Km.Hema Mishra Versus State of U.P. And others, 2014(1) CCR 385* has observed that in State of U.P., there is no provision in the Cr.P.C. for grant of anticipatory bail but even then High Court has power to grant anticipatory bail in writ jurisdiction in appropriate cases.

Under the circumstances, the petition in hand is found

to be maintainable.

Now coming to the facts of the case, as per the prosecution story, on 14.9.2019 at about 10:15 p.m. while complainant Rakesh Kumar son of Tilak Raj, resident of Talwara Khurd, Ellenabad was sitting in his fields, then Lal Chand, his wife Bhagwanti, his son Krishan Kumar (present petitioner) and brother Sukhdev Singh came and started abusing him; Lal Chand gave a gandasi blow on his head and right arm, whereas wife of Lal Chand and his son (present petitioner) were having dandas and Sukhdev Singh was having datar; they said that the complainant was not giving passage to them and all of them attacked the complainant; wife of Lal Chand and his son (present petitioner) attacked him with dandas causing him injuries on right leg and waist; Sukhdev Singh gave blow of datar on left elbow of left hand; Lal Chand gave blows of gandasi on head and right arm of the complainant, then they tied his hands and feet with rope, gave him slaps and fist blows, took him towards katcha passage of his house and dragged him there; ultimately he was rescued and assailants ran away, in the process taking away Rs.5,000/--, a mobile phone and a gold chain of the complainant.

It is stated by learned counsel for the petitioner that there is a cross version of the incident inasmuch as on 14.9.2019, complainant Rakesh Kumar himself forcibly trespassed into the house of accused party and inflicted injuries on the person of Lal Chand – father and Bhagwanti, mother of present petitioner but the police had not taken any action; that Bhagwanti mother of the present petitioner has been granted interim bail by this Court and petitioner be also granted this concession.

Heard.

Under the circumstances, the petitioner is directed to join the investigation by contacting the Investigating Officer within seven days from today and render all sort of co-operation. The petitioner is to surrender his passport before the Investigating Officer, if he has got one, otherwise to furnish affidavit in that regard. If in the meanwhile, he is arrested, he be released on bail to the satisfaction of the Investigating Officer/Arresting Officer.

Adjourned to 19.8.2020.

24.7.2020
Brij

(H.S. MADAAN)
JUDGE



सत्यमेव जयते

