

CRM-M-21406-2021

1

210 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-21406-2021

Date of decision: 05.07.2021

**Piyush minor through his natural mother Smt. Nirmla Devi wife of
Sh. Narender** ...Petitioner

Versus

State of HaryanaRespondent

CORAM:HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Manoj Tanwar, Advocate
for the petitioner.

Mr. Manish Bansal, DAG, Haryana.

RAJESH BHARDWAJ, J.(ORAL)

Matter has been taken up through video conferencing via Webex facility in the light of the Pandemic Covid-19 situation and as per instructions.

Prayer is made for the grant of anticipatory bail to the petitioner in case FIR No.65 dated 26.04.2021, under Section 8 of Protection of Children from Sexual Offence Act, 2012 (for short 'the Act') at Police Station Satnali, District Mohindergarh, Haryana.

Learned counsel for the petitioner has vehemently contended that the petitioner has been falsely implicated. No offence as alleged in the FIR is made out against him.

Admittedly, the petitioner before this Court is a juvenile and hence before appreciating the merits of the case, the issue of the maintainability of the petition on behalf of a juvenile under Section 438 of Code of Criminal Procedure (for short 'Cr.P.C') is of prime importance. For dealing with the juvenile, the relevant Act is The Juvenile Justice (Care and

CRM-M-21406-2021

2

Protection of Children) Act, 2015 (for short 'the Act'), which is a complete Code in itself and has specific provision for dealing with the child in conflict with law. Section 10 deals with apprehension of the child alleged to be in conflict with law and Section 12 pertains to bail to a person who is apparently a child alleged to be in conflict with law. The legislature mandates that as soon as a child is apprehended by the police, he shall be produced before the Board without any loss of time. The provisions of Section 12 would show that when any child in conflict with law is brought before a Board then such person notwithstanding anything contained in the Cr.P.C. or in any other law for the time being in force, be released on bail with or without surety. Proviso to this Section 12 further mandates that if it appears to the Board that there are reasonable grounds for believing that the release of the child in conflict with law, is likely to bring that person in 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 justice then the Board shall record the reasons for denying the bail.

Whereas the provisions of Section 438 Cr.P.C. are enumerated for granting the bail to the person who has apprehension of arrest. A reading of provisions of Section 438 Cr.P.C. vis-a-vis of relevant provisions of the Act would show that a juvenile cannot be arrested and thus, there is no question of apprehension of his arrest. Hence, the petition under Section 438 Cr.P.C. is not maintainable in case of a juvenile. A similar controversy came up before the Hon'ble Division Bench of the High Court of Madras in K.Vignesh Vs. State rep. By the The Inspector of Police, C-3, Seven Wells Police Station, Chennai-600079, 2017 SCC OnLine Mad 28442, and Hon'ble Division Bench while dealing with the issue appreciated various

provisions and observed in Para No.11 as under:-

“11. While enacting the Juvenile Justice (Care and Protection of Children) Act, 2015, the Legislature was well aware of Chapter V of the Code of Criminal Procedure more particularly Section 46 of the Code of Criminal Procedure as to how a person could be arrested. Had it been the intention of the Legislature, that a police officer should be empowered to arrest a child in conflict with law, the Legislature would have very well used the expression 'arrest' instead of using the expression 'apprehend' in Section 10 of the Juvenile Justice (Care and Protection of Children) Act, 2015. In our considered view, the Legislature has, thus, consciously omitted to use the expression 'arrest' in Section 10 of the Act, which means that the Legislature did not want to empower the police to arrest a child in conflict with law. The Legislature, being aware of the consequences that ensue the arrest, has avoided to empower the police to arrest a child in conflict with law. At the same time, the child in conflict with law cannot be let free as it would not be in the interest of the child in conflict with law as well as the society. Therefore, the Legislature had obviously thought it fit to give only a limited power to the police. In other words, the Legislature has empowered the police simply to apprehend a child in conflict with law and immediately, without any delay, cause his production before the Juvenile Justice Board. The Juvenile Justice Board has also not been empowered to pass any order of remand of the child in conflict with law either with the police or in jail. The proviso to Section 10 of the Act makes it very clear that in no case a child alleged to be in conflict with law shall be placed in a police lock-up or lodged in a jail. The Board has been obligated to send the child either to an observation home or a place of safety. There are lot of other safeguards in the Act as well as in the Juvenile Justice (Care and Protection of Children) Model Rules, 2016 to ensure that the child so apprehended by a police or any other authority shall not in any manner be disturbed emotionally, psychological or physically. Thus, a reading of the entire scheme of the Act would inform that no authority, including the police, has been empowered to arrest a child in conflict with law but instead the child in conflict with law could only be apprehended and produced before the Juvenile Justice Board.”

Finally in the concluding Para No.16, it was observed as follows:-

“16. Thus, there are lot of safeguards provided to the child in conflict with law in the event the child is apprehended by the police. In the light of these safeguards, and in the light of the legal position that the child in conflict with law cannot be arrested, the child in conflict with law need not apply for anticipatory bail. The legislature has consciously did not empower the police to arrest a child in conflict with law. Thus, it is manifestly clear that an application seeking anticipatory bail under [Section 438 Cr.P.C.](#) at the instance of a child in conflict with law is not at all maintainable. Similarly, a direction to the Juvenile Justice Board to release the child in conflict with law cannot be issued by the High Court in exercise of its inherent power saved under [Section 482 Cr.P.C.](#) Thus, we approve the view of the Hon'ble Mr.Justice P.N.Prakash in *Ajith Kumar Vs. State*, reported in 2016 (2) CTC 63 and we are impelled to overrule all the other orders wherein conflicting views have been expressed. Accordingly, we answer the reference.”

The view taken by the Hon'ble Division Bench of Madras High Court was followed by the Hon'ble Single Bench of Telangana High Court case titled as *Mr. Mohammed Bin Ziyad, a minor, represented by his mother Smt. Noor Vs. The State of Telangana and another* (WP No.12422 of 2021 decided on 21.6.2021) wherein again the issue in question was appreciated and view taken by the Hon'ble Division Bench of Madras High Court was followed in Para No.16 of the judgment which observed as under:-

“16. It is also relevant to note that the said issue of maintainability of anticipatory bail filed by the juvenile is no more *res integra*. A Division Bench of the Madras High Court in ***K. Vignesh v. State rep.by the Inspector of Police*** had an occasion to consider the said aspect. The Division Bench after considering various provisions including Section - 438 of [Cr.P.C.](#) and Section - 12 of the JJ Act, 2015 and also the fact that lot of safeguards were provided to the child in conflict with law in the event the child is apprehended by the police held that the child in conflict with law cannot be arrested, the child in conflict with law need not apply for anticipatory bail. The legislature has consciously did not

CRM-M-21406-2021

5

empower the police to arrest a child in conflict with law. Thus, it is manifestly clear that an application seeking anticipatory bail under Section - 438 of Cr.P.C. at the instance of a child in conflict with law is not at all maintainable. Similarly, a direction to the Juvenile Justice Board to release the child in conflict with law cannot be issued by the High Court in exercise of its inherent power saved under Section - 482 of Cr.P.C.”

A careful perusal of statutory provisions and the judicial precedents, would show that the legislature in the best of its wisdom has legislated the Act with highest of the sensitivity which is apparent from the various safeguards provided in the Act. The language of Section 12 of the Act would show the intention of the legislature in safeguarding the welfare of juvenile wherein it mandates the production of the child before the Board. The underlying purpose of the scheme appears to be that legislature wanted the personal interaction of the juvenile with the Board before arriving at a decision regarding his bail. On the other hand, such a provision do not have any place under Section 438 Cr.P.C and hence safeguard provided to a juvenile is automatically bypassed. Even otherwise the Act mandates the provision of granting the bail to a juvenile in a bailable or non-bailable offence notwithstanding anything contained in Cr.P.C.

Thus, I am of the opinion that in view of the clear mandate of the legislature, the petition under Section 438 Cr.P.C. on behalf of the juvenile is not maintainable and the petitioner is at liberty to seek his remedy in accordance with law.

Petition is disposed of.

(**RAJESH BHARDWAJ**)
JUDGE

05.07.2021

m. sharma

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No