

Reserved**Court No. - 70****Case :- CRIMINAL MISC. BAIL APPLICATION No. - 41420
of 2023****Applicant :- Ram Babu Vishwakarma****Opposite Party :- State Of U.P.And 3 Others****Counsel for Applicant :- Dinesh Kumar Tripathi****Counsel for Opposite Party :- G.A.,Mahabir Yadav,Mamta
Singh,Ram Awtar****Hon'ble Sameer Jain,J.**

1. Heard Sri Dinesh Kumar Tripathi, learned counsel for the applicant, Sri Nazakat Ali, Advocate, holding brief of Sri Ram Awtar, learned counsel for the informant, Dr. S.B. Maurya, learned AGA-I for the State and Ms. Mamta Singh, learned counsel appearing on behalf of High Court Legal Services.
2. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 228 of 2019, under Sections 376, 504, 506 IPC & 5/6 POCSO Act & 3(2)(v) SC/ST Act, Police Station- Utraon, District- Prayagraj, during pendency of the trial in the court below.
3. The instant bail application has been moved by the applicant under Section 439 of Cr.P.C. on the ground that applicant is child in conflict with law and as at the time of alleged incident, he was more than 16 years' of age and as per the allegation, he committed heinous offence, therefore, concerned Junevile Justice Board sent him to Special Judge (POSCO Act)-First, Prayagraj (Children's Court) to face trial as an adult under Section 18 of Juvenile Justice Act, 2015 (in short J.J. Act).
4. Learned counsel for the applicant submitted that as trial of the applicant is being conducted by the Children's Court as an adult and, therefore, he moved an application for bail under Section 439 Cr.P.C. but his bail application was dismissed, hence, the instant bail application.

5. He further submitted that earlier also applicant approached this Court in Criminal Appeal No. 1818 of 2020 under the provisions of Section 101(5) of J.J. Act to release him on bail but his appeal was dismissed by this Court on 01.09.2022.

6. At this stage, learned counsel for the informant and learned A.G.A. raised objection about the maintainability of the instant bail application under the provisions of Section 439 Cr.P.C. and submitted that as applicant is child in conflict with law and Children's Court is having all the powers of Juvenile Justice Board, therefore, his bail application under Section 439 Cr.P.C. before the Children's Court was not maintainable.

7. They further submitted that applicant could have filed his bail application under Section 12 of J.J. Act and, therefore, the instant bail application filed by the applicant before this Court under the provisions of 439 Cr.P.C. is not maintainable.

8. They further pointed out that even in view of the provisions of Section 101(5) of J.J. Act against the order passed by the Children's Court refusing bail to the applicant, an appeal is maintainable before this Court and, therefore, from this angle too the instant bail application under the provisions of Section 439 Cr.P.C. before this Court is not maintainable.

9. I have heard both the parties on the ground of maintainability of the instant bail application filed by the applicant, who is child in conflict with law .

10. Before indulging in the current debate, it is necessary to go through the relevant provisions of J.J. Act.

11. From the conjoint reading of Sections 15 and 18 of J.J. Act, it reflects that if Juvenile Justice Board after preliminary assessment finds, the child in conflict with law is above the age of 16 years and he alleged to have committed heinous offence then J.J. Board may order the transfer of the trial of such child in conflict with law to the Children's Court having jurisdiction to try such offences.

12. As per Section 2(20) of Definitions Clause of J.J. Act, a special Court established under the Protection of Children from Sexual Offence Act, 2012 is also the Children's Court.

13. As per Section 1(4) of J.J. Act:-

1. (4) Notwithstanding anything contained in any other law for the time being in force, the provisions of this Act shall apply to all matters concerning children in need of care and protection and children in conflict with law, including -

(i) apprehension, detention, prosecution, penalty or imprisonment, rehabilitation and social re-integration of children in conflict with law;

(ii) procedures and decisions or orders relating to rehabilitation, adoption, re-integration, and restoration of children in need of care and protection.

14. Section 8 of J.J. Act deals with powers, functions and responsibilities of the Board. Section 8(1) and (2) of J.J. Act runs as follows:-

8. (1) Notwithstanding anything contained in any other law for the time being in force but save as otherwise expressly provided in this Act, the Board constituted for any district shall have the power to deal exclusively with all the proceedings under this Act, relating to children in conflict with law, in the area of jurisdiction of such Board.

(2) The powers conferred on the Board by or under this Act may also be exercised by the High Court and the Children's Court, when the proceedings come before them under section 19 or in appeal, revision or otherwise.

15. From the perusal of Section 8(1) of J.J. Act, it is clear that Board constituted under J.J. Act for any district shall have the power to deal exclusively with all the proceedings under J.J.

Act relating to child in conflict with law and as per Section 8(2) J.J. Act, the powers conferred on the Board by or under this Act (J.J. Act) may also exercise by the High Court and Children's Court when the proceeding come before them under Section 19 or in appeal, revision or **otherwise**. In my view, the word **otherwise** is wide enough to even include proceedings of the trial before the Children's Court, in case at hand, POCSO Court and, therefore, if trial is being conducted by POCSO Court (Children's Court) then it has all the powers of Juvenile Justice Board, which also include power of Section 12 of J.J. Act to consider the bail application of child in conflict with law, therefore, in my considered view, during pendency of the trial of the child in conflict with law before Children's Court/ POCSO Court, the plea of bail of such child is maintainable under Section 12 of J.J. Act and being Special Act, J.J. Act overrides the provisions of Criminal Procedure Code including provisions of Section 439 Cr.P.C., therefore, bail plea of applicant under Section 439 Cr.P.C. before Children's Court in case at hand, POCSO Court was not maintainable.

16. Further, according to Section 101(5) of J.J. Act, any person aggrieved by an order of the Children's Court may file an appeal before the High Court in accordance with the procedure specified in Code of Criminal Procedure, 1973. Therefore, it appears that an order passed by the Children's Court is appealable before this Court under Section 101(5) of J.J. Act. Now question arises, whether an order either refusing or granting bail passed by the Children's Court is appealable before this Court under the provisions of 101(5) of J.J. Act.

17. From plain reading of Section 101(5) of J.J. Act, it appears that an appeal against the order passed by the Children's Court is maintainable before this Court in accordance with procedure specified in Code of Criminal Procedure and as per Section 372 of Cr.P.C., no appeal lies unless otherwise provided. As against the order of granting or refusing bail passed under Section 439 Cr.P.C., no appeal lies and after such order passed by the Sessions Court, an application for bail or cancellation of bail lies before this Court, therefore, in my view, even if Children's Court passed an order

under Section 439 Cr.P.C., either for granting or refusing the bail, then appeal under the provisions of Section 101(5) of J.J. Act before this Court is not maintainable.

18. Therefore, from the discussion made above, in my view, the bail application filed by the applicant under Section 439 Cr.P.C. is not maintainable and is accordingly **dismissed as not maintainable.**

19. However, it is open for the applicant to avail appropriate remedy before appropriate forum, if so advised.

Order Date :- 7.12.2023

KK Patel