



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.07.2016

CORAM:

THE HON'BLE DR.JUSTICE S.VIMALA

Crl.OP(MD)No.11571 of 2016

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Minor B.Gobi @ Gopinath
S/o.Balamurali,
Rep.by his father and natural guardian
G.Balamurali, S/o.Govindarajulu,
No.271, Gandhipuram,
K.Pudur, Madurai - 7.

..Petitioner/A1

-Vs-

1.The Assistant Superintendent of Police,
Office of the Assistant Superintendent of Police,
Madurai District, Madurai.

2.The Inspector of Police,
Appanthirupathi Police Station,
Madurai District.
(Crime No.36 of 2016)

...Respondents/Complainants

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C.
Praying to direct the learned Judicial Magistrate/Proceeding Officer,
Juvenile Justice Board, Madurai to consider the bail application that
will be filed by the petitioner in Crime No.36 of 2016 on the file of
the 2nd respondent police.

For Petitioner : Mr.S.Malaikani

For Respondents : Mr.A.P.Balasubramani,
Govt.Advocate(Crl.Side)**ORDER**

This petition has been filed, seeking a direction to the learned
Judicial Magistrate/Proceeding Officer, Juvenile Justice Board, Madurai
to consider the bail application that will be filed by the petitioner in
Crime No.36 of 2016 on the file of the 2nd respondent police. The case
has been registered against the petitioner, who is juvenile, under
Section 147, 352, 323, 354, 427 IPC and Section 4 of TNPHW Act and
Section 3(2)(v)(a) of the SC/ST (PoA) Act.

2. Heard the learned counsel for the petitioner and the learned
Government Advocate(Crl.Side) for the respondents.

3. When a specific question was posed as to why a direction is
required in a case where bail is mandatory under Section 12 of the
Juvenile Justice(Care and Protection of Children) Act, 2015(hereinafter
referred to as "the Act"), the learned counsel for the petitioner
submitted that the bail application of the juvenile is not being
considered on the same day of appearance, as the Juvenile Justice Board



wants the report of the Probation Officer before the grant of bail and that compels the minor to stay in Observation Home which the petitioner wants to avoid. Under such circumstances, this application for direction is taken up.

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4. Section 12 of Act, dealing with grant of bail to juvenile, is extracted hereunder for instance reference:

"12. Bail to a person who is apparently a child alleged to be in conflict with law - (1) When any person, who is apparently a child and is alleged to have committed a bailable or non-bailable offence, is apprehended or detained by the Police or appears or brought before a Board, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, be released on bail with or without surety or placed under the supervision of a Probation Officer or under the care of any fit person:

Provided that such person shall not be so released if there appears reasonable grounds for believing that the release is likely to bring that person into 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 and Board shall record the reasons for denying the bail and circumstances that led to such a decision.

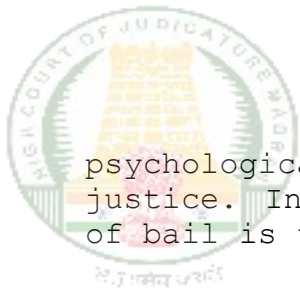
(2) When such person having been apprehended is not released on bail under sub-section(1) by the officer-in-charge of the police station, such officer shall cause the person to be kept only in an observation home in such manner as may be prescribed until the person can be brought before a Board.

(3) When such person is not released on bail under sub-section(1) by the Board it shall make an order sending him to an observation home or a place of safety, as the case may be, for such period during the pendency of the inquiry regarding the person, as may be specified in the order.

(4) When a child in conflict with law is unable to fulfil the conditions of bail order within seven days of the bail order, such child shall be produced before the Board for modification of the conditions of bail."

5. Section 12 of the Act does not contemplate obtaining of report of the Probation Officer before the grant of bail. If the Juvenile Justice Board is not granting bail, the alternative option open to the Juvenile Justice Board is to place the Juvenile under the supervision of a Probation Officer.

6. Bail can be refused under the proviso to Section 12 of the Act, only if the release is likely to bring the juveniles into the association with any known criminal or expose him to moral, physical or



psychological danger or that their release would defeat the ends of justice. In other circumstances, so far juveniles are concerned, grant of bail is the rule and non grant of bail is only an exception.

7. Under such circumstances, the petitioner is directed to appear before the learned Judicial Magistrate/Proceeding Officer, Juvenile Justice Board, Madurai within ten days from the date of receipt of a copy of this order and file bail application. The learned Judicial Magistrate/Proceeding Officer, Juvenile Justice Board, Madurai is directed to consider and pass orders on the bail application of the petitioner on merits on the same day of his appearance.

8. This Criminal Original Petition is accordingly disposed of.

Sd/

Assistant Registrar(AS)

/TRUE COPY/

Sub Assistant Registrar

To

1. The Assistant Superintendent of Police,
Office of the Assistant Superintendent of Police,
Madurai District, Madurai.

2. The Inspector of Police,
Appanthirupathi Police Station,
Madurai District.

3. The Judicial Magistrate/Proceeding Officer,
Juvenile Justice Board, Madurai.

4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1cc to M/S.S.Malaikani, Advocate in SR.No.39448

Crl.OP(MD)No.11571 of 2016
25.07.2016

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PA/SK-SKN/SAR I/26.07.2016/3P/6C (IT)