

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Crl. Misc. No. M-31415 of 2016(O&M)

Date of decision : 20.09.2016

Ashu

... Petitioner

versus

State of Punjab

... Respondent

CORAM:- HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Gaurav Chopra, Advocate
for the petitioner

Ms. Riffi Birla, Advocate
for the complainant

ANITA CHAUDHRY, J. (ORAL)

CRM-29280-2016

Application is allowed and Annexures P-4 and P-5 are taken on record.

CRM-M-31415-2016

This is the second petition filed by the petitioner seeking anticipatory bail in FIR No. 53 dated 13.05.2011 registered at Police Station City Fazilka, District Fazilka under Sections 376, 452, 506 IPC.

Learned counsel for the petitioner refers to Annexure P-3 and urges that as was directed by the High Court, the petitioner had approached the Court below and had filed an application and was ready for surrender but the Court did not accept the surrender and did not send him into custody and considered his plea of juvenility and directed him to appear before the Juvenile Justice Board and thereafter the Juvenile Justice Board declared the petitioner as juvenile in July 2016. It was urged that the anticipatory bail was filed before the Sessions Court and his plea had been rejected on the ground that the allegations were serious. It was urged

that gravity of the offence was immaterial.

The counsel had stated that the petitioner had filed an application for anticipatory bail in the High Court. Records of CRM-M-18019 of 2011 were called. A perusal of the order shows that the counsel before the Coordinate Bench in June 2011 at the outset had stated that he was ready and willing to appear before the Juvenile Board on 10.06.2011. The Coordinate Bench disposed of the petition with liberty to the petitioner to surrender before the Juvenile Justice Board on 10.06.2011. Liberty was granted to the petitioner to move an appropriate application before the Board and till then the arrest of the petitioner was stayed.

The petitioner did not approach the Court with an application for regular bail instead filed an application to declare him as a juvenile. The application given before the trial Court Annexure P-4 reads as under:-

“Application to declare him juvenile as per the order dated June 2011 passed by the Hon'ble Punjab and Haryana High Court in Criminal Misc. No. 18019 of 2011 (Copy enclosed with this application)

Sir,

The applicant submits as under:-

- 1. That in the abovesaid case Hon'ble Punjab and Haryana High Court, Chandigarh ordered in case titled as Ashu Versus State of Punjab Criminal Misc. No. 18019 of 2011 to declare him juvenile surrender before you through his father Mithan Lal s/o Ganpat Rai. After taking the evidence declare me juvenile and for the record of the evidence kindly fix the next date.*
- 2. That this is the first application.*
- 3. That the applicant was directed to surrender before this Hon'ble Court.*
- 4. That I am presenting my certificate before this Hon'ble Court.*

So, therefore, this application is presented before this Hon'ble Court as per the directions issued by the Hon'ble Punjab and Haryana High Court in Criminal Misc. No. 18.019 of 2011 and declare me juvenile and for further evidence next date be given.”

The above application was presented before the Duty Magistrate as the Principal Magistrate of Juvenile Justice Board had relinquished the charge consequent upon his transfer. The order passed by the Magistrate reads as under:-

Vide this application applicant Ashu seeks himself to be declared as Juvenile and has also produced copy of order dated 03.06.2011 passed by Hon'ble Mr. Justice Augustine George Masih, Judge, Punjab & Haryana High Court, wherein the petition of the applicant was disposed of with liberty to him to surrender before Juvenile Justice Board on 10.6.11 i.e. today. Further liberty was also granted to the petitioner to move appropriate application before the Court which shall consider the same and pass order in accordance with law. Till then arrest of the petitioner was stayed.

In view of the aforesaid order dated 3.6.11 passed by Hon'ble Pb. And Haryana High Court, the applicant/petitioner Ashu has surrendered himself before me. However, he is not sent to the custody as his arrest has been stayed by Hon'ble Pb. & Haryana High Court till the decision of the application moved by him. It is also apposite to mention here that his bail application as well as present application can only be considered by Juvenile Justice Board especially in view of order dt. 3.6.11 (supra). Accordingly, in letter and spirit of order dt. 3.6.11, accused Ashu is directed to appear before Juvenile Justice Board on 13.6.11 for further orders and consideration on the present application. Ahlmad is directed to send the paper to the concerned court well before the date fixed."

A perusal of the application would show that the petitioner did not approach the Court below for bail instead he moved an application for declaring him as a juvenile. The application was given in June 2011. The proceedings took four years. The application was decided on 16.07.2016. The details are not available, the copy of that order has not been placed on record. The petitioner thereafter moved an application seeking anticipatory bail before the Addl. Sessions Judge. The petitioner has failed to place on record documents to show the sequence

and what made him approach the Addl. Sessions Judge again for anticipatory bail.

The petitioner claims that since he was declared juvenile his application for anticipatory bail should not have been rejected on account of the gravity of the offence.

The FIR had been registered under Sections 376, 452, 506 IPC on 13.05.2011. The allegations against the petitioner were that he was living in the neighbourhood and was running a mobile phone and medical shop and had a bad eye on the victim and whenever she went to his shop for mobile re-charge he would tease her. On 04.05.2011 he called her out in the street and said that her SIM had been left and she should take it and believing him she opened the gate and he pushed her on the bed and raped her and ran away and in a hurry he left his slippers in her room. The girl was medically examined the next day and the FIR was registered when her mother returned from Beas.

A perusal of the petition bearing CRM-M-18019 of 2011 shows that the petitioner had earlier approached the Addl. Sessions Judge for anticipatory bail which was dismissed on 30.05.2011. This fact was not disclosed by the petitioner. Thereafter he approached this Court for anticipatory bail. The petitioner was directed to surrender before the Juvenile Justice Board on 10.06.2011 and liberty was granted to move an appropriate application and the appropriate application could only be an application for regular bail since directions by the High Court were for surrender. The petitioner failed to move an application for regular bail and misled the Court below and filed an application seeking determination of his juvenility. The Duty Magistrate instead of taking him into custody took a wrong view that the arrest had been stayed till the application filed by the petitioner was to be decided. A perusal of the file shows that here the petitioner failed to mention that he had earlier approached the Addl. Sessions Judge in 2011 or that his application for anticipatory bail had been dismissed. He has misled the Courts

below and has also misused the proceedings.

No doubt bail can be granted to a juvenile notwithstanding anything contained in the Code of Criminal Procedure. There is no order on the file to show that he was declared so. Even if he was it would not change the scenario. It is true that the gravity of the offence cannot be the deciding factor but while administering justice, the Court must be conscious of the offence to impart justice not only to the accused but also to the victim. It is a case of rape which unerringly indicate the criminal proclivities of the petitioner. In such a view the matter, anticipatory bail would defeat the ends of justice. I find it to be case where the petitioner has misused the proceedings. He was neither on anticipatory bail or regular bail. He is not entitled to any concession.

The petition is dismissed.

The petitioner would surrender before the trial Court on 23.09.2016, without fail, failing which the trial Court would issue warrants of arrest. Copy of this order be sent to the ASJ II, Ferozepur who would examine the file to see if the factum of dismissal of earlier anticipatory bail in 2011 was mentioned in the anticipatory bail application moved before it. . Copy of CRM-M-18019 of 2011 be also sent. The Additional District Judge would send a report alongwith copies of bail application moved in 2011 and order dated 16.07.2016 passed by the Juvenile Justice Board, if any. Copy of the order be also sent to the officer who dealt with the application on 10.06.2011 (Annexure P-5) at the place of his present posting.

September 20, 2016

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**(ANITA CHAUDHARY)
JUDGE**

Whether Reasoned/Speaking

Yes/No

Whether Reportable

Yes/No