

CRM-M-40284 of 2017

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-40284 of 2017
Date of Decision: 20.12.2017

Ashokpreet Singh @ Showpreet Singh

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. D.S. Pheruman, Advocate, for the petitioner.
Ms. Bhavna Gupta, DAG, Punjab.

RAMENDRA JAIN, J. (ORAL)

Prayer in the instant petition under Section 438 read with Section 482 Cr.P.C. and Article 21 of the Constitution of India has been made for grant of anticipatory bail to petitioner - Ashokpreet Singh @ Showpreet Singh in case FIR No.84 dated 02.09.2017 registered under Sections 323, 324, 34 IPC and lateron added Section 326 IPC at Police Station Fatehgarh Churian, District Gurdaspur.

Learned State counsel, referring to the judgment of the Chhattisgarh High Court in ***Preetam Pathak v. State of Chhattisgarh, 2014 (44) R.C.R.(Criminal) 111*** submits that the instant petition is not maintainable in view of Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (in short the 'Act').

Refuting the contention of learned State counsel, referring to the judgments of the Hon'ble Supreme Court in ***Joginder Kumar v. State of U.P., 1994(2) R.C.R.(Criminal) 601, Som Mittal v. Govt. of Karnataka, 2008(1) R.C.R.(Criminal) 880, Km. Hema Mishra v. State of U.P. and***

CRM-M-40284 of 2017

others, 2014(1) R.C.R.(Criminal) 666, **D.K. Basu v. State of West Bengal**, 1997(1) R.C.R.(Criminal) 372 and the judgment of this Court in **Om Parkash Sharma v. Union Territory Chandigarh**, 2001(3) R.C.R.(Criminal) 840, submits that there is no bar under the Act for grant of anticipatory bail to an accused, therefore, instant petition is quite maintainable. Section 12 of the Act deals only with regular bail and not the pre-arrest bail.

After giving thoughtful consideration to the submissions made by learned counsel for the parties, I find that the instant petition is not maintainable for the reasons to follow.

For ready reference, Section 12 of the Act is reproduced hereunder: -

“Bail of juvenile.— (1) *When any person accused of a bailable or non-bailable offence, and apparently a juvenile, is arrested or detained or appears or is 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 institution of fit person] but he shall not be so released if there appear reasonable grounds for believing that the release is likely to bring him into association with any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice.*

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

(3) *When such person is not released on bail under sub-section (1) by the Board it shall, instead of committing him to prison,*

CRM-M-40284 of 2017

make an order sending him to an observation home or a place of safety for such period during the pendency of the inquiry regarding him as may be specified in the order.”

Section 12(2) of the Act envisages that if a person is not released on bail by the investigating officer, such officer shall cause the person to be kept only in observation home in such a manner as may be prescribed until the person can be brought before the Board. Therefore, in the instant case, if the petitioner, in the considered opinion of the investigating officer, is not entitled to be released, in that eventuality he shall proceed to keep the petitioner in the observation home, which is not detrimental to the petitioner at any cost inasmuch as protection homes meant for keeping the juvenile are always situated distinctly and separately from any jail premises.

There is no provision in the Act for grant of anticipatory bail to the juvenile/petitioner, therefore, the case of the petitioner has to be dealt with under the provisions of Section 12 of the Act and not under Section 438 Cr.P.C.

The facts and circumstances of the authorities, referred to above, are not identical, rather are distinguishable from the facts and circumstances of the present case, therefore, no benefit of the same can be given to the petitioner. **Som Mittal** and **Km. Hema Mishra's** case (supra) deal with Section 438 Cr.P.C. qua the State of Uttar Pradesh, where the same was omitted by the U.P. State Legislature in 1976, whereas there are no such circumstances in the instant case. Rather in the Act itself no such provision for grant of anticipatory bail to juvenile has been made. Judgment in the case of **D.K. Basu** (supra) deals with Articles 21, 22, 32 and 226 of the Constitution of India, whereas in the instant case, there is no such dispute.

Similarly, the judgment of this Court in **Om Parkash Sharma's** case (supra)

CRM-M-40284 of 2017

deals with Section 18 of the Scheduled Casts and Scheduled Tribes (Prevention of Atrocities) Act, 1989, whereas instant case is under the Act.

It is needless to mention here that each case has its own facts. Therefore, none of the authorities referred by learned counsel for the petitioner throw any light for effective adjudication of the instant petition, rather it seems that the above authorities have been referred just to mislead the Court.

In view of discussion made above, petition is dismissed.

December 20, 2017
R.S.

(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No