

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

M.Cr.C. (A). No. 987 of 2017

- Piyush Sharma S/o Kanhaiya Sharma Aged About 17 Years
Occupation Student, Minor Through His Natural Guardian
Smt. Sapna Sharma, W/o Kanhaiya Sharma, R/o Nirvani Gali,
Near State Bank P. S. & District Bemetara Chhattisgarh

---- Applicant

Versus

- State Of Chhattisgarh Through The Station House Officer,
Police Station Bemetara, District Bemetara Chhattisgarh.

---- Respondent

For Applicant	:	Ms. Sharmila Singhai Advocate
For Respondent/State	:	Mr.Vinod Tekam, PL.
For Objector	:	P. P. Sahu, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

05.01.2018

1. The applicant is a Juvenile of 17 years of age and apprehending arrest in connection with Crime No. 616/2017 registered at Police Station - Bemetara, District – Bemetara (C.G.), for offences punishable under Section 354 of the Indian Penal Code and Section 8 of Protection of Children from Sexual Offences Act, 2012, the applicant has preferred this application for grant of anticipatory bail.

2. It is submitted that the applicant is innocent and has been falsely implicated in this case. The FIR has been registered against him without following the procedure laid down in Rule 8 of Juvenile Justice (Care and Protection of Children) Act, 2016 (for short 'the Act, 2016'), according to which no FIR can be registered, where the offence is not heinous in nature. The heinous offence has been defined in Section 2 (33) of Juvenile Justice (Care and Protection of Children) Act, 2015 (for short 'the Act, 2015') According to which any offence under I.P.C any other law, which is punishable with imprisonment of 7 years or more is of heinous offence. It is also submitted that on the same ground the petition under Section 482 of the Cr.P.C. has been filed before this Court. In C.R.M.P. No. 1573 of 2017, order dated 10.11.2017 the co-ordinate Bench of this Court has been granted interim relief in favour of the applicant. It is further submitted that the complaint against the applicant is totally false and baseless, the applicant is a juvenile, therefore, it is prayed that the applicant may be enlarged on anticipatory bail.
3. Learned counsel for the State opposes the bail application and submission made.
4. Learned counsel for the objector submits that apart from the offence of I.P.C under Protection of Children from Sexual Offences Act, 2012 (for short 'the POCSO Act'), has also been registered against the applicant. Section 42 (A) of the POCSO Act, 2012 provides that the provisions of Act shall have overriding effect on the provisions of any other law, which are in-consistent with the provisions of the Act, 2012, hence,

under these circumstances the legal grounds raised by the applicant do not have any force. The offence alleged against the applicant is of grievous in nature, hence, the applicant is not entitled for grant of anticipatory bail.

5. Heard counsel for both the parties and perused the case diary.
6. The complaint has been filed by the mother of the victim that the applicant had been sexually harassing her minor daughter, the victim, since long in various manners and also by using force. On the basis of this complaint the case has been registered against the applicant.
7. Considered on the submission made Rule 8 of Juvenile Justice (Care and Protection of Children) Act, 2016 clearly provide that no FIR shall be registered except where heinous offence alleged to have been committed by the child, in other cases where the offence alleged to have been committed is not heinous in nature, the information shall be entered by the police in general daily diary and then the child shall be forwarded to the Board. The direction is specific that no FIR shall be lodged if the crime committed is not of heinous nature. Offence registered against the applicant is under Section 354 of I.P.C which is punishable upto 5 years of imprisonment of either description and the offence under Section 8 of the POSCO Act, is also punishable with maximum 5 years of imprisonment of either description, hence, in accordance with definition of heinous offence under Section 2 (33) of the Act, 2015. it can be held that the offence registered against the applicant is not heinous in nature, for which the Rule 8 of Act, 2015 was required to be followed in this case.

8. Considering on the objection raised by learned counsel for objector under Section 42 (A) of the POCSO Act, seems to be different, provisions of this Act, do not deal with the offence committed by any Juvenile offender, hence, in these circumstances it cannot be held that the provisions of Juvenile Justice Act, 2015 are inconsistent with provisions under the POCSO Act, 2012.
9. Taking into consideration the fact and circumstance of this case, that the applicant is a juvenile and has to be dealt with under the provisions of Juvenile Justice Act, 2015. According to the provisions for bail under the Juvenile Justice Act, 2015 grant of bail rule, whereas, the rejection of bail is exception, for these reasons, I am of the opinion that this is a fit case where the applicant deserves to be enlarged on anticipatory bail.
10. Accordingly, the anticipatory bail application is allowed and it is directed that in the event of arrest of the applicant in connection with the aforesaid offence, he shall be released on bail by the officer arresting him on his mother's Smt. Sapna Sharma executing a personal bond in sum of Rs.25,000/- with one surety in the like sum to the satisfaction of the concerned Investigating Officer. The applicant shall also abide by the following conditions :
 - (i) that the applicant shall make himself available for interrogation before the investigating officer as and when required;
 - (ii) that the applicant shall not, directly or indirectly, make any inducement, threat or promise to any person

acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or to any police officer;

- (iii) that the applicant shall not act, in any manner, which will be prejudicial to fair and expeditious trial; and
- (iv) that the applicant shall appear before the trial Court on each and every date given to him by the said Court till disposal of the trial.

Sd /-

(Rajendra Chandra Singh Samant)

Judge