

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

Crl. Misc. No. M-19810 of 2018

Date of decision : 24.05.2018

Gurjinder Singh

... Petitioner

versus

State of Punjab

... Respondents

CORAM:- HON'BLE MRS. JUSTICE ANITA CHAUDHRY

**Present: Mr. B.S. Jatana, Advocate
for petitioner.**

Mr. Pawan Sharda, Sr. DAG Punjab

ANITA CHAUDHRY, J.

The petitioner is seeking anticipatory bail in FIR No. 23 dated 16.02.2018, registered under Sections 323, 376 and 506 IPC and under Sections 4, 5 and 6 of Protection of Children from Sexual Offence Act, 2012 (for brevity, POCSO) at Police Station Sardulgarh, District Mansa.

The allegations against the petitioner are that he ravished the prosecutrix and when she got pregnant he administered some pills to her. She was beaten up and threats were extended and she was thrown in the canal. She was saved by a passer-by.

The petitioner, being juvenile, filed an application for anticipatory bail before the Sessions Court, but the same was dismissed being not maintainable vide order dated 18.04.2018.

I have heard learned counsel for the parties on the point of maintainability of the instant petition.

Learned counsel for the petitioner has relied upon **Sudhir**

Sharma Vs. State of Chhattisgarh, 2017(3) CGLJ 405 to contend that the application for anticipatory bail by the juvenile is maintainable either before the Sessions Court or before the High Court.

Learned State counsel has supported the order passed by the Sessions Court and had contended that as per the scheme of Juvenile Justice (Care and Protection of Children) Act, 2015 (for brevity, the Act of 2015), the anticipatory bail application by the juvenile is not maintainable.

Section 12 of Act of 2015 reads as under:-

12. 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 1[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, 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.”

The provisions are clear and unambiguous. Only the Board is empowered to deal with juvenile in conflict with law and pass order on the bail application. This Court is of the considered view that the Board will consider if he claims to be a juvenile.

In Satyaendra Sharma Vs. State of Madhya Pradesh, 2014

(2) MPLJ (Cri.) 374 it was laid down that application for grant of anticipatory bail cannot be entertained by the High Court or the Court of Sessions but can be exercised only when proceedings come before them in appeal, revision or otherwise except under Sections 438 and 439 Cr.P.C.

Relevant portion of the said judgment reads as under:-

“21. The anticipatory bail can be granted in anticipation of arrest but such proceedings are not inserted in the Act. The only provision for bail of juvenile is given under Section 12 of the Act which has been discussed as above.

22. In view of the aforesaid discussion, this Court is of the view that application for grant of anticipatory bail preferred by the juvenile cannot be entertained by the High Court or the Court of Session by applying the provision contained under Section 6(2) of the Act. The powers conferred on the Board can be used by the High Court and the Court of Session only when proceedings come before them in appeal, revision or otherwise except under Section 438 and 439 of Cr.P.C. Therefore, I respectfully disagree with the interpretation made by the learned Single Judge of the Hon. Rajasthan High Court and Hon. Chhattisgarh High Court.”

A similar view has recently been taken by the High Court of

**Madaras in Crl. O.P.(MD) No. 23992 of 2015 titled as Minor Y. Pathe
Khan Vs. The State.**

Faced with this, learned counsel submits that the petitioner would appear before the Board concerned within a week and move an application under Section 12 of the Act of 2015.

The petition is dismissed. If an application is filed within a week from today, the same shall be considered and decided by the concerned Board as expeditiously as possible.

May 24, 2018
Jiten

(ANITA CHAUDHRY)
JUDGE

Whether speaking/ reasoned

Yes/ No

Whether reportable

Yes/ No