

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

**CRM-M-29426-2018 (O&M)
Date of Decision: 14.09.2018**

Kamal Singh

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. S.K. Choudhary, Advocate
for the petitioner(s).

Ms. Jaspreet Kaur, A.A.G., Punjab.

ANITA CHAUDHRY, J

Petitioner is seeking anticipatory in case FIR No.03 dated 05.01.2018 registered under Sections 363 & 366-A IPC and Section 6 of POCSO Act and subsequent added Section 120-B IPC at Police Station Sadar, Amritsar.

The petitioner is a juvenile.

On the last date of hearing, the complainant's side had informed that it was a case of concealment as the complainant had also approached the Principal Magistrate, Juvenile Justice Board, Amritsar and they had also handed over copy of the same to the counsel opposite.

Learned counsel for the petitioner had sought time to verify and concedes that an application was filed before the Juvenile Justice Court but

it was anticipatory bail. The fact was not disclosed in the petition filed here.

An objection had been taken that the application for anticipatory bail by the juvenile is not maintainable either before the Sessions Court or 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 [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 subsection (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.**

The petition is dismissed. If the petitioner approaches the Board, the application shall be considered and decided by the concerned Board as expeditiously as possible.

September 14, 2018

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**(ANITA CHAUDHRY)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No