

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

CRM M-20813 of 2020 (O&M)

Date of Decision: July 30, 2020

Gurtej SinghPetitioner

Versus

State of Punjab Respondent

CORAM : HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present : Mr. Gurmeet Singh Saini, Advocate
for the petitioner.

Mr. Aditya Sharda, Asst. AG, Punjab
for the respondent/State.

FATEH DEEP SINGH, J. (Oral)

The matter has been taken up through video-conferencing on account of outbreak of pandemic COVID-19.

Petitioner who is a minor in conflict with law aggrieved over his likely detention in case bearing FIR No. 74 dated 23.06.2020 under Sections 363 and 366-A of Indian Penal Code, Police Station Talwandi Bhai has initially moved the Court of learned Sessions Judge, Ferozepur for bail under Section 438 Cr.P.C. and vide orders dated 02.07.2020, the

same stood declined. It is against such an order, the child in conflict of law has come about before this Court.

Heard Mr. Gurmeet Singh Saini, Advocate for the petitioner and Mr. Aditya Sharda, Asst. AG, Punjab for the respondent/State and perused the records.

The present allegations have come about on the statement of one Jaswinder Singh, father of minor girl aged around 16 years a student of 10th class who went missing on 14.06.2020 around 12.30 p.m. It was subsequently revealed that the victim was in a relationship with the present petitioner and, subsequently, his younger brother who too is a minor followed the same track and the latter, thereafter, went abroad but remained in touch with the girl. It is, thereafter, as per the plan chalked out by the brothers alongwith one Ravi took away the girl with intention to solemnize her marriage with non-applicant, brother of the petitioner.

Upon hearing the submissions of the two sides and perusal of the records to the specific query of this Court as to the maintainability of an application in such an eventuality under Section 438 Cr.P.C., reliance has sought to be placed on **CRM M-19907 of 2020** titled as **Krishan Kumar minor through his mother** Vs. **State of Haryana**. However, this Court considering the ambit of Section 12 of the Juvenile Justice (Care and

Protection of Children Act, 2015) in short '**the Act**', which is reproduced as below to lay emphasis:-

12. (1) When any person, who is apparently a child and is alleged to have committed a bailable or non-bailable offence, is apprehended or detained by the police or appears or brought before a Board, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 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 person: Provided that such person shall not be so released if there appears reasonable grounds for believing that the release is likely to bring that person into association with any known criminal or expose the said person to moral, physical or psychological danger or the person's release would defeat the ends of justice, and the Board shall record the reasons for denying the bail and circumstances that led to such a decision.

(2) When such person having been apprehended is not released on bail under subsection (1) by the

officer-in-charge of the police station, such officer shall cause the person to be kept only in an observation home in such manner as may be prescribed until the person can be brought before a Board.

(3) When such person is not released on bail under sub-section (1) by the Board, it shall make an order sending him to an observation home or a place of safety, as the case may be, for such period during the pendency of the inquiry regarding the person, as may be specified in the order.

(4) When a child in conflict with law is unable to fulfil the conditions of bail order within seven days of the bail order, such child shall be produced before the Board for modification of the conditions of bail.

A similar question had arisen before the Allahabad High Court, wherein, a Division Bench in **Shahaab Ali (Minor) and another** Vs. **State of U.P.**, had held that issue regarding anticipatory bail of a juvenile has to be dealt by the non-obstante clause as employed in Section 12 merely relegates power of appeal as conferred and vested in the Board but in

case of anticipation of orders, Section 12 of the Act is neither indicative nor determinative of the right of the child to seek anticipatory bail. The Court interpreting the purpose of Section 10 of the Act held that it did not empower the police to '**Arrest**' a child in conflict with law and gave the police only limited powers. The Juvenile Justice Board has also not been empowered to pass any order of remand of the child in conflict with law either with the police or in detention as a juvenile initially on apprehension cannot be kept in lock up custody or in jail. Furthermore, in **K. Vingnesh Vs. State represented by the Inspector of Police, C-3, Seven Wells Police Station, Chennai**, the Madras High Court has held as under:-

14. From the above narration of various provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015, one can understand, without any doubt whatsoever, that a child in conflict with law cannot be arrested and thus there can not be apprehension of arrest and so an application at the instance of a child in conflict with law either before the High Court or before the Court of Sessions under 438 Cr.P.C. is not maintainable. The the Juvenile Justice (Care and Protection of Children) Act, 2015 is a self-contained Code which is both substantive as well as procedural. The Act takes care of the interest of the child in

conflict with law on the child being apprehended. When a question arises before the Board as to whether to grant bail to the child or not, the Board shall not grant bail if it finds that it is likely to bring the child into association with any known criminal or expose the said person to moral, physical or psychological danger or when the Board finds that the persons release would defeat the ends of justice. Even after bail is refused to the child, the child cannot be remanded to either judicial custody or police custody. The Board shall ensure the welfare of the child by keeping the Child in an Observation Home or a place of safety.

15. Thus, there are lot of safeguards provided to the child in conflict with law in the event the child is apprehended by the police. In the light of these safeguards, and in the light of the legal position that the child in conflict with law cannot be arrested, the child in conflict with law need not apply for anticipatory bail. The legislature has consciously did not empower the police to arrest a child in conflict with law. Thus, it is manifestly clear that an application seeking anticipatory bail under Section 438 Cr.P.C. at the instance of a child in conflict with

law is not at all maintainable. Similarly, a direction to the Juvenile Justice Board to release the child in conflict with law cannot be issued by the High Court in exercise of its inherent power saved under Section 482 Cr.P.C. Thus, we approve the view of the Hon'ble Mr. Justice P.N. Prakash in Ajith Kumar Vs. State, reported in 2016 (2) CTC 63 and we are impelled to overrule all the other orders wherein conflicting views have been expressed. Accordingly, we answer the reference.

Furthermore, in MCRC No. 8523 of 2016 titled as Tejram Nagrachi Juvenile S/o Mohanlal Nagrachi Aged About 16 Years Wrongly Mentioned As Nagarachi In The Rejection Order Of The Court Below, Through His Legal/ Natural Guardian Father Mohanlal Nagrachi, S/o Dashru Ram Nagrachi, Aged About 46 Years, R/o Village Bhendra, Mahaveer Para, Post Office, Police Station And Tahsil Bhakhara, District Dhamtari, Chhattisgarh Versus State Of Chhattisgarh Through The Station House Officer, Police Station Bhakhara, District Dhamtari, Chhattisgarh and connected matter MCRC No. 6724 of 2016 titled as Jayant Kumar Sinha S/o Late Khemnath Sinha Aged About 17 Years resident of Village Sibdi, Tehsil Gunderdehi Police Station Suregaon District Balod Chhattisgarh, Chhattisgarh Versus State Of Chhattisgarh

Through District Magistrate District Balod Chhattisgarh, the Chhattisgarh High Court faced with the same proposition, wherein, their Lordships have observed as follows:-

10. Apprehension of child alleged to be in conflict with law.

- (1) As soon as a child alleged to be in conflict with law is apprehended by the police, such child shall be placed under the charge of the special juvenile police unit or the designated child welfare police officer, who shall produce the child before the Board without any loss of time but within a period of twenty four hours of apprehending the child excluding the time necessary for the journey, from the place where such child was apprehended:

Furthermore, the Calcutta High Court in a similar situation in **An Application for Anticipatory Vs. Krishna Garai** and others observed as under:-

The 2000 Act is a special Act carved out from the 1973 Act and meant especially for juveniles. This Act therefore will prevail over the 1973 Act and having held that the 2000 Act will prevail over the 1973 Act this application on behalf of the petitioner no. 2 is not maintainable and is dismissed as not maintainable. The decisions cited for the proposition that an

anticipatory bail application is maintainable will not apply as in 2005 CRI L.J. 3271 it was held that the juvenile would be entitled to file an application under Section 439 Cr.P.C. only after he had exhausted remedy available under Section 12. In fact an application had been filed in the reported decision under Section 12 of 2000 Act. The said case is therefore distinguishable on facts as in the instant case no application under Section 12 has been filed. 2007 CRI L.J. 3047 is distinguishable on facts as it was dealing with the Scheduled Caste and Schedule Tribes (Prevention of Atrocities) Act 1989 and the 2000 Act. The said 1989 Act is not in question in the said case. In 2013 CRI L.J 851 Section 4(2) Cr. P. C. and the saving clause being Section 5 Cr. P. C. were not considered.

In view of the aforesaid this application fails and is dismissed.

Liberty is given to the petitioners to approach the appropriate forum, if so advised.

As has been the single bench view of this Court in Krishan Kumar's case (**supra**), the same is contrary to the above ratios under the Act, which is primarily enshrined for the welfare of the minors. There has been due address to such a

situation under the Act which ensures that application in such a situation by a minor need not be made under the Cr.P.C. as a minor cannot be held and placed in custody of the police in normal parlance. In the light of this being a grey area in view of conflicting views the matter needs to be examined by a Larger Bench of this Court. However, keeping in view the present Pandemic COVID 19 situation and urgency involved in the matter, this Court deems it expedient to hold the only recourse available for the petitioner is to approach the appropriate authority, i.e., the Board and, thus, seeking appropriate directions in this regard rather than knocking at the Court under Section 438 of Cr.P.C.

In the light of the above observations, the present petition stands disposed off accordingly.

July 30, 2020

amit rana

(FATEH DEEP SINGH)**JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No