

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

241

CRM-M-18575-2021

Date of decision: 03.08.2021

Abhishek Sharma minor/juvenile
through his father Brij Mohan Sharma

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Divyadeep Walia, Advocate
for the petitioner.

Mr. Rana Harjasdeep Singh, DAG, Punjab
for the respondent-State.

ARUN KUMAR TYAGI, J. (ORAL)

(The case has been taken up for hearing through video conferencing.)

The petitioner has filed this petition under Section 438 of the Code of Criminal Procedure, 1973 (for short, "the Cr.P.C") for grant of anticipatory bail in case FIR No.86 dated 12.09.2020 registered under Sections 307, 324, 323, 294, 506, 148 and 149 of the Indian Penal Code, 1860 at Police Station Jodhan, District Ludhiana.

While issuing notice of motion on 12.05.2021, Co-ordinate Bench of this Court had granted interim anticipatory bail to the petitioner with direction to make himself available for interrogation by the police officer and the relevant part of the said order reads as under:-

*"Ld. Counsel for the petitioner relies upon the decision of the Kerala High Court in **"Mr. X (Prashob) Vs. State of Kerala", 2018(3) R.C.R. (Criminal) 327** to contend that an application under Section 438-A of the Cr.P.C. seeking anticipatory bail of a juvenile is maintainable before the High Court.*

2. Notice of motion.

3. *Mr. B.S. Sewak, Additional Advocate General, Punjab to accept notice on behalf of the State. Let a copy of the Paper-book be supplied to him.*

4. *Now, to come up on 03.08.2021.*

5. *Considering the fact that the parties have already compromised the matter, on account of which, the other co-accused persons in the case have already been granted bail and the present petitioner is a minor/juvenile, meanwhile, in the event of arrest of the petitioner by the Arresting Officer, he shall be released on interim bail subject to the following conditions:-*

I That he shall make himself available for interrogation by a Police Officer as and when required;

II That he 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 from disclosing such facts to the Court or to any Police Officer and;

III That he shall not leave India without prior permission of the Court."

The petition has been opposed by the learned State Counsel. However, no reply has been filed by the respondent-State.

I have heard learned Counsel for the petitioner and learned State Counsel and have gone through the record.

Learned Counsel for the petitioner has submitted that the petitioner, who is a juvenile in conflict with law, has been falsely implicated in the case. The matter has also been compromised between the parties. All other co-accused have been granted bail. In compliance with order dated 12.05.2021, the petitioner made himself available for interrogation by the police officer. The petition for grant of anticipatory bail to a juvenile in conflict with law is maintainable. Therefore, the petitioner may be granted anticipatory bail. In support of his arguments, learned Counsel for the petitioner has placed reliance on the judgment of Kerala High Court in ***Mr. X (Prashob) Vs. State of Kerala***, ***2018(3) R.C.R. (Criminal) 327.***

On the other hand, learned State Counsel has vehemently opposed the petition and submitted that the question of grant of bail to a juvenile in conflict with law is governed by Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015 and applicability of Section 438 of the Cr.P.C. is thereby excluded. The petition for grant of anticipatory bail to a juvenile in conflict with law is not maintainable. Therefore, the petition may be dismissed.

There are conflicting judgments by Co-ordinate Benches of this Court as well as Division/Single Benches of other High Courts as to maintainability of petition for grant of anticipatory bail to a juvenile in conflict with law. While noticing such conflicting judgments the Co-ordinate Bench of this Court made reference vide order dated 11.08.2020 passed in CRM-M-17856-2020 for placing of the matter before Hon'ble the Chief Justice for constituting a Bench of appropriate strength for resolving the difference. The reference is still pending for decision.

However, learned State Counsel has, on instructions from ASI Paramjit Singh, acknowledged that in compliance with order dated 12.05.2021 passed by this Court, the petitioner made himself available for interrogation by the concerned police officer and that apprehension and custody of the petitioner is not required in the case.

In view of the facts and circumstances of the case, pendency of the reference as noticed above, beneficial nature of the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015, nature of accusation and the factum of compromise between the parties, also the fact that apprehension and custody of the petitioner

is not required in the case and there is no material to justify the apprehension of the petitioner fleeing from justice or tampering with evidence or criminally intimidating the prosecution witnesses and there being no reasonable grounds for believing that the release of the petitioner on anticipatory bail is likely to bring him into association with any known criminal or expose him to moral, physical and psychological danger or would defeat the ends of justice, but without expressing any opinion on the merits of the case, I am of the considered view that the petitioner deserves the grant of anticipatory bail.

In view of the above, the petition is allowed and order dated 12.05.2021 granting interim bail to the petitioner is made absolute. However, the petitioner shall make himself available for interrogation by the police officer again if and as and when called upon to do so and shall abide by the conditions enumerated in Section 438 (2) of the Cr.P.C., failing which the protection of anticipatory bail order shall not be available to him.

03.08.2021

Vinay

(ARUN KUMAR TYAGI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No