

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-33193 of 2021(O&M)
Date of Decision: November 16, 2021

Navpreet Singh alias Nana (Minor) through his mother ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

--

Present: - Mr.Prateek Pandit, Advocate for the petitioner.

Mr.Bhupender Beniwal, AAG Punjab.

Mr.Jasdeep Singh, Advocate for complainant.

-

HARINDER SINGH SIDHU, J.

This is a petition under Section 438 Cr.P.C. for grant of anticipatory bail to the petitioner in case FIR No.156 dated 09.06.2021 under Sections 406, 420, 380, 120-B IPC registered at PS City, Kapurthala District Kapurthala.

The petitioner is a juvenile aged about 14 years. His petition u/s 438 Cr.P.C. for grant of anticipatory bail was dismissed by the Ld. Additional Sessions Judge, Kapurthala. He has accordingly filed the present petition. Vide order dated 17.08.2021 the petition was adjourned to enable Ld. Counsel for the petitioner to address arguments on the issue of maintainability of the petition. Meanwhile the arrest of the petitioner was directed to remain stayed.

The question of maintainability of a petition u/s 438 Cr.P.C. on behalf of a juvenile has been considered in detail in a decision of this Court in CRM-M-21406-2021 titled **Piyush minor through his natural mother Smt. Nirmala Devi wife of Sh. Narender Versus State of Haryana** decided on 05.07.2021. It has been held that a reading of the provision of Section 438 Cr.P.C.

vis-a-vis the relevant provisions of the Juvenile Justice would show that a juvenile cannot be arrested and thus there can be no question of his apprehension of arrest. Hence a petition under Section 438 Cr.P.C. on behalf of a juvenile is not maintainable.

In the aforesaid decision a judgment of Division Bench of the High Court of Madras in **K.Vignesh Vs. State rep. by the The Inspector of Police, C-3, Seven Wells Police Station, Chennai-600079, 2017 SCC OnLine Mad 28442** was taken note of where it has been held that a reading of the entire scheme of the Act reveals that no Authority including the Police has been empowered to arrest a child in conflict with law. Instead, a child in conflict with law can only be apprehended and produced before the Juvenile Justice Board. To the same effect are the observations of the Telangana High Court in case **Mr. Mohammed Bin Ziyad, a minor, represented by his mother Smt. Noor Vs. The State of Telangana and another WP No.12422 of 2021 decided on 21.06.2021**, wherein, it was held that as per the scheme of the Act a child in conflict with law cannot be arrested. And hence, he need not apply for anticipatory bail.

This petition is accordingly disposed of giving liberty to seek his remedy in accordance with law.

November 16, 2021

gian

**(HARINDER SINGH SIDHU)
JUDGE**

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No