

CRM-M-43885-2021

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(204)

CRM-M-43885-2021.
Date of Decision:-21.12.2021.

Rohit

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Ripudaman Singh Sidhu, Advocate for the petitioner.

Mr. Praveen Bhadu, AAG, Haryana.

Mr. Nagar Singh, Advocate for
Mr. A.S. Shera, Advocate for the complainant.

VIKAS BAHL, J. (Oral)

This is the first petition under Section 438 of Cr.P.C. for grant of anticipatory bail to the petitioner in FIR No.477 dated 13.08.2021 under Sections 323, 325, 307, 506 and 34 of IPC and Section 25 of the Arms Act, 1959, registered at Police Station Kundli, District Sonapat.

On 18.10.2021, a Co-ordinate Bench of this Court was pleased to pass the following order:-

“Prayer in this petition is for grant of anticipatory bail to the petitioner who is minor and the role attributed to him is that he brought red chilly powder from his house and threw in the eyes of the complainant. Apart from this, there is no overt act attributed to the petitioner. Counsel, on this basis, contends that

the petitioner is ready and willing to join investigation and cooperate with the same.

Notice of motion.

On the asking of the Court, Mr. Deepak Manchanda, Addl. A.G., Haryana, accepts notice on behalf of the State of Haryana.

Let the petitioner join investigation and appear before the Investigating Officer on 25.10.2021 at 11:00 AM at Police Station Kundli, District Sonapat. On his doing so, petitioner be released on anticipatory bail subject to his furnishing personal bonds and surety to the satisfaction of the Arresting/Investigating Officer. However, petitioner shall continue to join the investigation as and when called upon to do so and shall abide by the conditions as provided under Section 438 (2) Cr.P.C.

*List for consideration on **08.11.2021.***

Learned counsel for the petitioner as well learned State counsel, on instructions from ASI Rajesh has submitted that the petitioner has joined the investigation and is not required for further investigation.

Learned counsel for the petitioner has very clearly submitted that in the present case there is a difference of opinion of various Courts as to whether a petition under Section 438 in the case of a juvenile is maintainable or not. It has been submitted that the Division Bench of Chhattisgarh High Court, in case titled as **“Sudhir Sharma Vs. State of Chhattisgarh”, (2017) 3 CGLJ 405** after considering the entire issue observed that an application for grant of anticipatory bail under Section 438

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of Cr.P.C. at the behest of CICL (child in conflict with law) before the High Court or Court of Sessions is maintainable and the said remedy is not excluded by the operation of Section 12 of the Act of 2015.

Learned State counsel has submitted that the said issue has been referred to the Larger Bench.

Without finally opining on the maintainability of the petition, this Court feels that, considering the facts that the Co-ordinate Bench of this Court had granted interim protection to the petitioner and the petitioner has joined the investigation and is not required for further investigation, the present petition deserves to be allowed.

Accordingly, the present petition is allowed and interim order dated 18.10.2021 is made absolute.

However, nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail application.

(VIKAS BAHL)
JUDGE

December 21, 2021.

sandeep

Whether speaking/reasoned:-

Yes/No

Whether Reportable:-

Yes/No