

HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

CRIMINAL PETITION No. 1891 of 2022

ORDER:

This Criminal Petition under Sections 437 and 439 Cr.P.C. is filed by the petitioner – Child in Conflict with Law No. 1 (CACL No.1) in Crime No. 31 of 2022 on the file of Karimnagar I Town Police Station registered for the offences punishable under Sections 304-II, 304-A, 337 read with Section 109 IPC., seeking bail.

2. The case of the prosecution is that the de facto complainant lodged a complaint stating that on 30.01.2022, CACL Nos. 2 and 3 and their friend CACL No. 1 drove the car bearing Registration No. TGS 02 EY 2121 coming from Kaman Chowrastha in a rash and negligent manner with over-speed and hit and ran over his wife and six others and thereafter, ran over the footpath railing and parked motor cycle and stopped by hitting an electrical pole. As a result, the wife of the de facto complainant and others received bleeding injuries and subsequently, four among them succumbed to the injuries.

3. Learned counsel for the petitioner Sri Bethi Venkateswarlu submits that the petitioner is alleged to have committed the offences under Sections 304(ii), 304-A and 337

IPC. He submits that the petitioner is arrayed as CACL No. 1. It is submitted that the petitioner was arrested and remanded to judicial custody on 31.01.2022 and since then, he has been languishing in jail.

4. Learned counsel submits that the petitioner is studying 9th class and incarcerating him for a long time will have impact on his future. It is submitted that as provided under Section 12(1) of the Juvenile Justice (Care and Protection of Children) Act, 2015, (for short 'the Act'), the petitioner has moved two four bail applications before the Board and they were dismissed. He further submits that while dismissing the bail petition, the Court below observed that test identification parade is warranted and the statements under Section 161 Cr.P.C. are yet to be recorded. Learned counsel submits that the Court below failed to take into consideration Section 12 of the Act and considered it as if the Court below is considering an Application under Section 437 or 439 Cr.P.C. He submits that taking into consideration the child's future and the psychological impact which it is going to have on his future, his case may be considered for grant of bail.

5. Learned Assistant Public Prosecutor, on the other hand, submits that the Court below taking into consideration the

nature of offence where four people have lost their life and another person sustained bleeding injuries and taking into consideration the seriousness of crime, has not granted bail to CCLs. Further, as test identification parade is crucial and as the same is pending, the Court has refused to grant bail. He submits that this Petition is not maintainable before this Court, when an Application filed before the Board under Section 12 of the Act is dismissed, against the said order, under Section 101 of the Act, an Appeal lies to the Children's Court within 30 days from the date of the order and from there to the Sessions Court and a Revision under Section 102 lies to the High Court. According to him, even a Sessions Court can entertain the Appeal if they fail to approach the Children's Court within 30 days. Learned Assistant Public Prosecutor submits that the remedy available to the petitioner is either to approach the Children's Court or the Sessions Court but not before this Court as the parameters for granting bail under Section 439 of the Act are altogether different and on that ground, this Application deserves to be dismissed.

6. Having heard the learned counsel on either side, now the issue that falls for consideration is '*whether this Court can entertain the petition filed under Section 439 Cr.P.C. seeking bail for a child in conflict with law.*'

7. The Juvenile Justice (Care and Protection of Children) Act, 2015 is *'an Act to consolidate and amend the law relating to children alleged and found to be in conflict with law and children in need of care and protection by catering to their basic needs through proper care, protection, development, treatment, social reintegration, by adopting a child-friendly approach in the adjudication and disposal of matters in the best interest of children and for their rehabilitation through processes provided and institutions and bodies established'*. Further, the Act is a medium for the State to honour the directive principles of State policy particularly under Article 39F of the Constitution by giving opportunities to children to develop in a healthy manner and in conditions of freedom and dignity. Section 1(4) of the Act says that *'notwithstanding anything contained in any other law for the time being in force, the provisions of this Act shall apply to all matters concerning children in need of care and protection and children in conflict with law including (i) apprehension, detention, prosecution, penalty or imprisonment, rehabilitation and social integration of children in conflict with law; (ii) procedures and decisions or orders relating to rehabilitation, adoption, reintegration and restoration of children in need of care and protection.'* Apparently, this Act being a special enactment which

is focused at dealing with all the issues pertaining to the children and starts with a *non obstante* clause, will have a overriding effect on all other laws.

8. It is pertinent to look at certain important provisions in the Act. Section 12 of the Act deals with '*bail to a person who is apparently a child alleged to be in conflict with law*', which reads thus:

“12: Bail to a person who is apparently a child alleged to be in conflict with law

(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 (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 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 persons 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 sub-section (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.”

Section 101 deals with Appeals. It reads as under:

“101: Appeals

(1) Subject to the provisions of this Act, any person aggrieved by an order made by the Committee or the Board under this Act may, within thirty days from the date of such order, prefer an appeal to the Childrens Court, except for decisions by the Committee related to Foster Care and Sponsorship After Care for which the appeal shall lie with the District Magistrate:

Provided that the Court of Sessions, or the District Magistrate, as the case may be, may entertain the appeal after the expiry of the said period of thirty days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time and such appeal shall be decided within a period of thirty days.

(2) An appeal shall lie against an order of the Board passed after making the preliminary assessment into a heinous offence under section 15 of the Act, before the Court of Sessions and the Court may, while deciding the appeal, take the assistance of experienced psychologists and medical specialists other than those whose assistance has been obtained by the Board in passing the order under the said section.

(3) No appeal shall lie from,—

(a) any order of acquittal made by the Board in respect of a child alleged to have committed an offence other than the heinous offence by a child who has completed or is above the age of sixteen years; or

(b) any order made by a Committee in respect of finding that a person is not a child in need of care and protection.

(4) No second appeal shall lie from any order of the Court of Session, passed in appeal under this section.

(5) Any person aggrieved by an order of the Children's Court may file an appeal before the High Court in accordance with the procedure specified in the Code of Criminal Procedure, 1973 (2 of 1974).

Section 102 of the Act provides for a Revision which reads as under:

“102:Revision

The High Court may, at any time, either on its own motion or on an application received in this behalf, call for the record of any proceeding in which any Committee or Board or Children's Court, or Court has passed an order, for the purpose of satisfying itself as to the legality or propriety of any such order and may pass such order in relation thereto as it thinks fit:

Provided that the High Court shall not pass an order under this section prejudicial to any person without giving him a reasonable opportunity of being heard.”

9. A Coordinate Bench of this Court in ***Mohammed Bin Ziyad represented by his mother Smt. Noor v. State of Telangana*** (Writ Petition No. 12422 of 2021), with regard to grant of pre-arrest bail under Section 438 Cr.P.C. has observed at paragraph 24, as follows:

“ In view of the above said discussion and also considering the principle laid down by the Division Bench of Madras High Court in ***Vignesh(2)***, I disagree with the principle laid down by the Punjab and Haryana High Court in ***Kishan Kumar(1)*** and also the Gujarat High Court in ***Kureshi Irfan Hasambhai(8)***. I respectfully agree with the principle laid down by the Division Bench of Madras High Court in ***K. Vignesh(2)***. Thus, according to this Court, filing of an anticipatory bail application by a juvenile under Section – 438 of Cr.P.C. in a Writ Petition is not maintainable, and that the juvenile has to avail the remedy under Section 12 of the JJ Act, 2015.”

In view of the authoritative pronouncement of this court an application under section 438 Cr.P.C. seeking

anticipatory bail is not maintainable in the light of Section 12 of the Act.

10. The next issue is with regard to maintainability of a regular bail petition before this Court. Section 12 of the Act starts with a *non-obstante* clause. The juvenile has to approach the Board under Section 12 of the Act and the jurisdiction under Sections 437 and 439 Cr.P.C. is excluded when a special provision has been made in a special enactment under Section 12 as well as Sections 101 and 102 of the Act which provides for Appeal and Revision. Apart from that as per Section 12, there is a command to enlarge the CCLs. on bail unless and until that being a heinous crime. Parameters for granting bail under Section 439 Cr.P.C. and under Section 12 of the Act are altogether different and for that reason, the CCL has to file an Application under Section 12 of the Act before the Juvenile Justice Board (JJB). In this case, already CCL No.3 had approached the JJB and his Application for bail is dismissed twice. Just because an Appeal to the Children's Court and the Sessions Court lies, whether this Court can exercise power of granting bail to this CCL is the question to be considered. As per Section 102 of the Act, this Court has got *suo motu* power, but while dealing with an Application for bail of a CCL., the Court has

to take into consideration the parameters under Section 12 but not the parameters for grant of bail under Section 439 Cr.P.C. This being a special enactment which is aimed for the welfare of the CCL, there should be a purposeful consideration of these provisions.

11. Section 8(2) of Act reads thus-

(2) The powers conferred on the Board by or under this Act may also be exercised by the High Court and the Children's Court, when the proceedings come before them under section 19 or in appeal, revision or otherwise.

(3) The functions and responsibilities of the Board shall include'--

(a) ensuring the informed participation of the child and the parent or guardian, in every step of the process;

(b) ensuring that the child's rights are protected throughout the process of apprehending the child, inquiry, aftercare and rehabilitation;

(c) ensuring availability of legal aid for the child through the legal services institutions;

(d) wherever necessary the Board shall provide an interpreter or translator, having such qualifications, experience, and on payment of such fees as may be prescribed, to the child if he fails to understand the language used in the proceedings;

(e) directing the Probation Officer, or in case a Probation Officer is not available to the Child Welfare Officer or a social worker, to undertake a social investigation into the case and submit a social investigation report within a period of fifteen days from the date of first production before the Board to ascertain the circumstances in which the alleged offence was committed;

(f) adjudicate and dispose of cases of children in conflict with law in accordance with the process of inquiry specified in section 14;

(g) transferring to the Committee, matters concerning the child alleged to be in conflict with law, stated to be in need of care and protection at any stage, thereby recognising that a child in conflict with

law can also be a child in need of care simultaneously and there is a need for the Committee and the Board to be both involved;

(h) disposing of the matter and passing a final order that includes an individual care plan for the child's rehabilitation, including follow up by the Probation Officer or the District Child Protection Unit or a member of a non-governmental organisation, as may be required;

(i) conducting inquiry for declaring fit persons regarding care of children in conflict with law;

(j) conducting at least one inspection visit every month of residential facilities for children in conflict with law and recommend action for improvement in quality of services to the District Child Protection Unit and the State Government;

(k) order the police for registration of first information report for offences committed against any child in conflict with law, under this Act or any other law for the time being in force, on a complaint made in this regard;

(l) order the police for registration of first information report for offences committed against any child in need of care and protection, under this Act or any other law for the time being in force, on a written complaint by a Committee in this regard;

(m) conducting regular inspection of jails meant for adults to check if any child is lodged in such jails and take immediate measures for transfer of such a child to the observation home; and

(n) any other function as may be prescribed.

12. Under Section 8(3) (a) to (n), the responsibilities of board are mentioned but the same is silent when the juvenile approaches the children's court for bail, whether such Application has to be decided as per the parameters under Section 439 or as per Section 12 of Act which stipulates that bail shall be granted to a juvenile notwithstanding the provisions of Cr.P.C. or any other law for the time being in force. The

parameter for grant of bail under section 439 and Section 12 are altogether different. Under section 439, discretion is vested with the court and basing on the gravity of offence and other circumstances, Court may consider bail application but whereas under Section 12 of the Act, only under three circumstances bail can be rejected. Though the Act is silent with regard to the procedure that has to be adopted before the children court or High court invariably the procedure under Section 12 of the Act alone has to be followed.

13. Though Section 102 speaks about the power of High court under revision, it also specifies that on an application or on its own, the High court has got power to examine the legality or otherwise of the order passed by the Committee or Court.

14. The whole object of the Act is to provide for the care, protection, treatment, development and rehabilitation of neglected or delinquent juveniles. It is a beneficial legislation aimed at making available the benefit of the Act to the neglected or delinquent juvenile. It is settled law that interpretation of the statute of beneficial legislation must be to advance the cause of legislation for the benefit of whom it is made and not to frustrate the intendment of legislature.

***Pratap Singh v. State of Jharkhand*¹**

15. In this case, the CCL is arrested on 31.01.2022 and has been languishing in jail since then. The petitioner is pursuing 9th standard. Any of the exceptions for grant of bail under Section 12 of the Act will not attract as far as this petitioner is concerned.

16. While rejecting the bail application of juvenile the same cannot be denied on the ground that the crime is serious and heinous in nature. The order must disclose that grant of bail to the juvenile accused is against his interest as there is possibility of being associated with known criminals or there is any danger to him or likelihood of ends of justice being defeated. When these circumstances are not existing, the bail of the juvenile is mandatory, further rejection of bail also is not in the interest of the juvenile. The reasons that are assigned by the Board suffer from material irregularity and illegality. The Juvenile Justice Act is a piece of social welfare legislation and enacted with an avowed object to take care of welfare of children. The 'personal liberty' of an individual is at the highest pedestal including a juvenile. Grant of bail is a rule and rejection of bail is an exception. Though the petitioner has to approach the Court as

¹ (2005) 6 SCC (J)1

per the Act taking into consideration the fact that the juvenile is languishing in jail from 31.01.2022 and as the petitioner does not fall under any of the exceptions under Section 12, taking into consideration his age and staying away from the family as a mark of punishment is going to have effect on the children's future, this Court is inclined to grant him bail in the facts and circumstances of the case.

17. The Criminal Petition is accordingly, allowed. The petitioner shall be enlarged on bail on his executing a personal bond for a sum of Rs.20,000/- (Rupees twenty thousand only) with two sureties for a like sum each to the satisfaction of the Additional Judicial First Class Magistrate (Juvenile) at Karimnagar. The petitioner shall appear before the Probation Officer at Karimnagar once in a week i.e. on Sunday between 12.00 Noon and 05.00 P.M.

LALITHA KANNEGANTI, J

08th March 2022

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