

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

**CRM-M-5136 of 2022(O&M)
Date of Decision: February 08, 2022**

Mona @ Monika		...Petitioner
	Versus	
State of Haryana		...Respondent

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

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Present: - Mr.Arpandeep Narula, Advocate for the petitioner.

Mr.Saurabh Girdhar, AAG, Haryana.

Mr.Rahil Mahajan, Advocate for complainant.

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HARINDER SINGH SIDHU, J.

This is a petition under Section 438 Cr.P.C. for grant of anticipatory bail to the petitioner (Mona @ Monika) in case FIR No.121 dated 01.12.2020 under Sections 384, 387, 506 and 34 IPC registered at PS Rori, District Sirsa.

Learned counsel for the petitioner states that the petitioner has been falsely implicated in the case. In fact, prior to the alleged incident, the petitioner had already got an FIR registered against the complainant on 03.10.2020 at Women Police Station, Sirsa. The present FIR is just a counter-blast to that version.

It needs to be noticed that the date of birth of the petitioner is 21.11.2002 and thus, at the time of the alleged incident in August/September, 2020, she was a minor. The age of an accused at the time of commission of alleged crime is to be considered by the Court while hearing plea for bail.

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 the petitioner to seek her remedy in accordance with law.

February 08, 2022

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(HARINDER SINGH SIDHU)
JUDGE

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No