

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

CRM-M-7349 of 2022

DECIDED ON: 22nd February, 2022

Sameer Khan (Minor) through her grandmother Manjura Devi

.....PETITIONER

VERSUS

State of Punjab

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN.

Present: Mr. G.S. Sandhu, Advocate for petitioner.

Mr. Amit Mehta, Sr. DAG Punjab.

AVNEESH JHINGAN, J (ORAL)

Today physical hearing was held but on request of learned counsel for the petitioner, the matter is taken up by way of hybrid hearing.

This petition under Section 438 of the Code of Criminal Procedure is filed seeking pre-arrest bail in case FIR No. 247 dated 14.9.2021, under Sections 323, 427, 148, 149, 307 IPC, 1860 and under Sections 326, 324, 325 IPC, 1860 added later on vide GD No. 13 dated 19.10.2021, registered at Police Station City Sri Muktsar Sahib, District Muktsar Sahib.

The application for anticipatory bail filed by petitioner was dismissed by Additional Sessions Judge, Sri Muktsar Sahib being not maintainable.

Learned counsel for the petitioner submits that the issue whether petition for anticipatory bail would lie in spite of Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015 starting with non-obstante clause is referred to the Division Bench.

Submission is that while making reference in that case the

petitioner was granted interim bail.

Learned State counsel submits that matter is pending in the reference before a Division Bench and there is no interim order passed by the Division Bench.

The petitioner in the present case is pleaded to be less than of 18 year of age. The legal issue is pending in a reference, the Court as an interim measure had granted interim protection in that case. The application of petitioner was dismissed without going on merits, only on the issue of maintainability.

As an interim measure, the matter is remitted back to the Additional Sessions Judge, Sri Muktsar Sahib to decide the application under Section 438 Cr.P.C. on merits.

It is clarified that any decision taken with regard to anticipatory bail shall be subject to outcome of the decision in reference pending before the Division Bench.

22nd February, 2022
reema

(AVNEESH JHINGAN)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>