

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

**CRM-M-26194 of 2021
Date of Decision:- 07.04.2022**

Harmanpreet Singh

....Petitioner

Vs.

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Present:- Mr. Naresh Kumar, Advocate
for the petitioner.

Ms. Samina Dhir, DAG, Punjab.

KARAMJIT SINGH, J.(Oral)

Prayer is for grant for anticipatory bail to the petitioner in case having FIR No.76 dated 23.05.2021 registered under Sections 304, 148, 149 IPC 1860, Police Station Bullowal, District Hoshiarpur.

The counsel for the petitioner submitted that petitioner is aged about 16 years and is apprehending his arrest in the aforesaid criminal case.

The the present petition is contested by the State Counsel who submitted that the present petition under Section 438 Cr.P.C filed by minor is not maintainable.

The commission of an offence allegedly committed by 'child in conflict with law' is to be enquired into by the Juvenile Justice Board in accordance with the procedure prescribed in Juvenile Justice (Care and Protection of Children) Act, 2015 (in short Act of 2015). Section 12(1) of Act of 2015 deals with a situation where a child in conflict with law is apprehended or detained by the police or appears or brought before the Board. It deals with the procedure to be followed after apprehending a child in conflict with law. When a child in conflict with law is apprehended or detained or appears or brought before the Board, the provision contained in Section 12(1) of Act of 2015 comes into play.

The High Court of Allahabad in ***Shahaab Ali (Minor) and another Vs. State of U.P. 2020 Cri LJ 4479*** observed that there is no provision in the Act of 2015 which either expressly or by necessary implication excludes the applicability of Section 438 Cr.P.C which provides for granting anticipatory bail. The Act of 2015 does not contain any special provision dealing with granting of anticipatory bail to a child in conflict with law. The High Court of Allahabad further observed that once a first information is registered or information otherwise recorded by the SJPU or the CWPO with regard to a child in conflict with law, the provisions of Section 438 Cr.P.C stand impliedly excluded.

The matter regarding maintainability of petition under Section 438 CrPC at behest of child in conflict with law is pending before the larger Bench of this Court.

In view of the above, the present petition is hereby disposed of with a direction to the petitioner i.e. child in conflict with law to appear before Juvenile Justice Board within next 20 days and on his appearance, the Board is directed to proceed against him in accordance with the provisions of the Act of 2015 and till then, the petitioner is granted interim protection.

07.04.2022
P. Chawla

(KARAMJIT SINGH)
JUDGE

Whether reasoned / speaking? Yes / No

Whether reportable? Yes / No