

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-31615-2022

Date of decision : 22.7.2022

Nisha alias Nisha Rani

..... Petitioner (s)

Versus

State of Punjab

..... Respondent (s)

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. Gaurav Sharma, Advocate
for petitioner.

Mr. B.S. Sewak, Additional A.G. Punjab.

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HARINDER SINGH SIDHU, J.

This is a petition filed under Section 438 Cr.P.C. for grant of anticipatory bail to petitioner in case FIR No. 94 dated 5.7.2022 registered under Sections 304 IPC and Section 21 of NDPS Act, Police Station Dhanaula, District Barnala.

The petitioner is a juvenile aged 16 years. Her petition under Section 438 Cr.P.C. for grant of anticipatory bail was dismissed by learned Additional Sessions Judge, Barnala. She has accordingly filed this petition.

The question of maintainability of a petition under Section 438 Cr.P.C. on behalf of a juvenile has been considered in detail in a decision of this Court in CRM-M-21046-2021 titled **Piyush minor through his natural mother Smt. Nirmala Devi wife of Sh. Narender Versus State of Haryana** decided on 5.7.2021. It has been held that a reading of provisions 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 juvenile is not maintainable.

In the aforesaid decision a judgment of Division Bench of the High Court of Madras in **K. Vignesh Versus State rep. by 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

apprehended and produced before the Juvenile Justice Board. To the same effect are the observations of the Telengana High Court in case **Mr. Mohammed Bin Ziyad, a minor, represented by his mother Smt. Noor Versus The State of Telengana and another** WP No. 12432 of 2021 decided on 21.6.2021 wherein it was held that asper 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 seek his remedy in accordance with law.

(HARINDER SINGH SIDHU)
JUDGE

22.7.2022
sjks

Whether reasoned order : Yes / No

Whether reportable : Yes / No