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Crl.O.P.(MD)Nos.20006 and 20007 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.11.2023

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THE HON'BLE MR.JUSTICE G.ILANGO VAN

Crl.O.P.(MD)Nos.20006 and 20007 of 2023

Minor Anand @ Anantharaj

... Petitioner
in Crl.O.P(MD)No.20006 of 2023

Minor Chellamuthu

... Petitioner
in Crl.O.P(MD)No.20007 of 2023

Vs.

The Inspector of Police,
South Gate Police Station,
Madurai City.
(Crime No.455 of 2023)

...Respondent/Complainant
(in both cases)

COMMON PRAYER : Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, to direct the Juvenile Justice Board, Madurai to consider the bail application of the petitioners on the same day of his surrender in Crime No.455 of 2023 on the file of the respondent police and pass such other or further orders as this Court.

For Petitioner : Mr.R.Ponkarthikeyan

For Respondent : Mr.M.Sakthi Kumar
Government Advocate
(Crl.side)

(in both cases)



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COMMON ORDER

These Criminal Original Petitions are filed to direct the Juvenile Justice Board, Madurai, to consider the bail application of the petitioners on the same day of his surrender in Crime No.455 of 2023 on the file of the respondent police.

2. The facts in brief is that the case in Crime No.455 of 2023 was registered against eight persons for the offences under Sections 147, 342, 384, 294(b), 323 and 324 of IPC. Among eight persons, the petitioners are arrayed as accused Nos. 5 and 7, respectively. In the complaint it has been stated that on 01.10.2023, one Thirumoorthi gave his ATM card to the defacto complainant's son to withdraw a sum of Rs.1000/-. But her son alleged to have withdrawn Rs.2000/-. That was questioned by Thirumoorthi. At about 8 p.m., on the same day, the accused alleged to have locked his son in the house belongs to Thirumoorthi, assaulted and locked in a room. He was also harassed, humiliated. When that was questioned by the defacto complainant, the accused persons threatened her and criminally intimidated her. On 06.10.2023, over humiliation and



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threat made by the accused persons, the defacto complainant's son, consumed poison. On that basis of the complaint, the case is registered. stating that the petitioner is a juvenile on the date of occurrence. The present petition is filed seeking direction to the Juvenile Justice Board to consider the bail application of the petitioner on the same day of surrender.

3. At that time of hearing the petition, learned counsel for the petitioner would submit that Juvenile Justice Board used to follow a particular procedure. They used to call for report from the probation officer and till the receipt of the report from the concerned officer, the the juvenile, will be sent to the Observation Home. After receiving the report only, orders will be passed. According to the learned counsel for the petitioner, if such a procedure is adopted, then the future of this petitioner will be affected. On that account, he seeks a direction to the Juvenile Justice Board to consider the bail application on the date of surrender.

4. A detailed procedure has been set out in the Juvenile Justice



(Care and Protection of Children) Act, whenever a child in conflict with law is either produced or surrendered before the Board, Section 10(2) deals with the situation, which reads as under:

"10.Apprehension of child alleged to be in conflict with law - (1) ----

(2) The State Government shall make rules consistent with this Act,

(i) to provide for persons through whom (including registered voluntary or non-governmental organisations) any child alleged to be in conflict with law may be produced before the Board:

(ii) to provide for the manner in which the child alleged to be in conflict with law may be sent to an observation home or place of safety, as the case may be;"

5. Section 12 of the Act, deals with the bail to the child in conflict with law.

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;

(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 or a place of safety, as the case may be, in such manner as may be prescribed until the person can be brought before a Board.

(3) When such persons 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.

6. A combined reading of Section 10(2) and Section 12 of the Act, makes the position clear that only in case of refusal or rejection of the



bail, the juvenile in conflict with law can be sent to the observation home. But for the purpose of passing the order, in the bail application, sending the child in conflict with law to the observation home is no way contemplated.

7. If the Juvenile Justice Board wants the antecedents of the child in conflict with law, to be ascertained, no doubt that it is well within the power to get proper enquiry report from the probation officer. But for that purpose, it is not desirable or permissible to order the juvenile in conflict with law to be detained in the observation home.

8. Instead of sending the juvenile to the observation home, as an interim measure, the Juvenile Justice Board is well within its power to send the juvenile in conflict with law to the custody of the parents / guardians as the case may be. Rule 9 of the Juvenile Justice Board (Care and Protection of Children) Model Rules, deals such process. Rule 9 reads as under:

"9.production of the child alleged to be in conflict with law before the Board. - (1) When the child alleged to be in conflict with law is apprehended, he shall be produced before



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the Board within twenty-four hours of his being apprehended, along with a report explaining the reasons for the child being apprehended by the police.

(2) On production of the child before the Board, the Board may pass orders as deemed necessary, including sending the child to an observation home or a place of safety or a fit facility or a fit person."

9. It is also makes the position clear that it is not always not necessary that at the first instance, the child must be sent to the observation home, pending the bail application proceedings.

10. As noted above, the Juvenile Justice Board shall also follow the procedure in sending or keeping the child in conflict with, law within the care and custody of either the parent or the guardian as the case may be, if the offences are not heinous in nature.

11. Accordingly, these Criminal Original Petitions are disposed of.

08.11.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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G.ILANGOVA,N,J.

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To

- 1.The Juvenile Justice Board, Madurai.
- 2.The Inspector of Police, South Gate Police Station,
Madurai City. (Crime No.455 of 2023)
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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