

18.07.2024
SL No.20
Court No.29
(gc)
(Allowed)

CRM (A) 2080 of 2024

In Re:- An application for anticipatory bail under section 438 of the Code of Criminal Procedure filed in connection with C. Spl. No.: 123/2023 corresponding to CR Case No.5475/2022 out of Sagarpara Police Station Case No.337 of 2022 dated 12.12.2022 under Sections 363/365/34 of the Indian Penal Code adding Section 6 of the POCSO Act.

And

In the matter of : **Accused No.1 of the present application and also the mother of the accused no.2 & Anr.**

- Petitioners.

Mr. Soumyajit Das Mahapatra,
Md. Golam Nure Imrohi,
Mr. Supriyo Das,
Ms. Arundhuti Barai,
Ms. Madhurai Sinha

....For the Petitioners.

Mr. Ranadeb Sengupta,

....For the De facto Complainant.

Mr. Debasis Roy, Ld. P.P.
Mr. Bibaswan Bhattacharya,
Ms. Mamata Jana

... For the State.

1. There are divergent views with regard to the maintainability of anticipatory bail of a juvenile. Presently the issue is pending before a Larger Bench. A similar issue is also pending before the Hon'ble Supreme Court in SLP No.(s) 12659 of 2023, ***Yuvraj v. The State of Rajasthan.***
2. The petitioner no.1 is the mother of the petitioner no.2. The petitioner no.2 is a juvenile.
3. The learned Public Prosecutor appearing on behalf of the State submits that the petitioner no.2 is a child in conflict with law and is charged with serious and heinous offence.

4. Mr. Ranadeb Sengupta, learned Counsel appearing on behalf of the de facto complainant submits that in spite of best efforts, no instruction has been received, however, he has relied upon the communication placed before this Court by the learned P.P. wherefrom it appears that the victim girl has been recovered and she is presently staying with her mother and statement under Section 164 of the Cr.P.C. of the victim girl has been recorded.
5. The learned Counsel for the petitioners submits that the petitioner no.2 may be allowed to surrender before the Juvenile Justice Board within a stipulated time but he may not be sent to any home till his age and heinousness of the offence are finally determined by the Juvenile Justice Board in accordance with Section 14 of the Juvenile Justice Act.
6. The learned Counsel for the petitioners also submits that the petitioner no.2 is a juvenile and he cannot be arrested treating him as an adult.
7. The statement of the victim recorded under Section 164 of the Cr.P.C., prima facie, shows that the petitioner no.2 is a child in conflict with law. At this stage, we are not usurping the power of Juvenile Justice Board and deciding whether the petitioner no.2 is required to be sent to any home or shall be kept under the supervision of a probation officer or under the care of any fit person or any other measures as it falls entirely within the domain of the Board.

8. However, the issue remains whether the petitioner no.2 shall be entitled to anticipatory bail.
9. The Juvenile Justice (Care and Protection of Children) Act, 2015 is a self-contained code which requires production of a juvenile before the Juvenile Justice Board once it is prima facie established that the child is in conflict with law.
10. Section 12 of the Juvenile Justice Act specifically mentions that a child who is alleged to have committed a bailable or non-bailable offence (in the instant case, prima facie, a non-bailable offence) is apprehended or if he appears or brought before the Board, the Board shall consider the matter in accordance with the provisions of the said Act and decide whether the petitioner no.2 shall be released on bail with or without surety or placed under the supervision of the probation officer or under the care of any fit person.
11. The question of arrest of a juvenile does not arise. However, it is expected that juvenile being aware of a complaint against him would appear before the Board through his guardian and the Board shall decide the matter in accordance with the provisions of the said Act.
12. In view of the fact that a child cannot be arrested and detained in a police station and at best on being apprehended he can be kept in a child friendly corner of the police station concerned at the instance of a Police Officer specially trained and should not be in uniform on being informed of any such offence. Under Section 12, the Police Officer can bring the said

child before the Board for appropriate direction. We do not find that Section 12 contemplates any arrest by a police of any juvenile.

13. However, we do not wish to dilate on this aspect of the matter as a Larger Bench has been constituted to resolve the issue and also the right of a juvenile to approach the High Court for anticipatory bail is pending before the Hon'ble Supreme Court, we dispose of this application by directing the petitioner no.1 to ensure the presence of the petitioner no.2 before the Board within ten days from date.
14. The petitioner no.1 shall accompany the petitioner no.2 to the Juvenile Justice Board and on the appearance of the juvenile, the Board shall proceed with the matter in accordance with the provisions of the Juvenile Justice Act, 2015.
15. We are not expressing any opinion with regard to the merits of the matter as we feel that the Juvenile Justice Board is the competent authority to decide the matter after taking into consideration the materials that may be produced including the statement of the victim recorded under Section 164 of the Cr.P.C.
16. However, we are of the view that the petitioner no.1 is entitled to anticipatory bail as no specific overt act has been attributed to the petitioner no.1.
17. Accordingly, we direct that in the event of arrest, the petitioner no.1 shall be released on bail upon furnishing a bond of Rs.5,000/-, with two sureties of like amount each, one of

whom must be local, to the satisfaction of the arresting officer and also subject to the conditions as laid down under Section 438(2) of the Code of Criminal Procedure, 1973. It is further directed that the petitioner no.1 shall cooperate with the investigation till the submission of the final report.

18. Accordingly, the application for anticipatory bail is disposed of.
19. The learned Counsel for the petitioners submits that the petitioner no.2 is not the principal accused and no specific allegation is made against the petitioner no.2.
20. The learned Counsel for the petitioners has referred to the judgment of a Division Bench of the Punjab and Haryana High Court in ***Jatin Vs. State of Punjab (CRM-M 17856 of 2020)*** whereby the view expressed by the Calcutta High Court in ***Miss Surabhi Jain (Minor) & Ors. Vs. the State of West Bengal in CRM 405 of 2021*** decided on 23rd August, 2021 was followed.
21. We have also extended the interim protection as by reason of this order the question of arresting the petitioner no.2 could not and does not arise but we are of the view that the petitioner no.2 shall appear before the Juvenile Justice Board as the said Act is a code in itself dealing with the present situation. We feel that it would not be prudent for us to denude the JJB of its power of directing interim measure after a juvenile is produced. Any such direction to the JJB at this stage would be interfering with the power entrusted to the said Board under the Act, 2015 by the legislature.

22. The learned P.P. has produced the instruction received from the de facto complainant that she has no grievance against the petitioners.
23. The original instruction upon perusal is returned to the learned P.P. with a direction to produce the same before the JJB.
24. A photocopy of the instruction containing the letter is kept with the record.
25. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Soumen Sen, J.)

(Uday Kumar, J.)