

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

101

CRM-M-15022-2024 (O&M)
Date of Decision : 22.03.2024

SXXXX

.... Petitioner

VERSUS

STATE OF HARYANA

.... Respondent

CORAM : HON’BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Sapan Dhir, Advocate for the petitioner.
Mr. Saurabh Girdhar, AAG Haryana for the respondent.

ALKA SARIN, J. (ORAL)

1.
- This is the second petition under Section 438 Code of Criminal Procedure, 1973 for grant of anticipatory bail to the petitioner in FIR No.0333 dated 16.09.2023 registered under Sections 354-C, 376, 506, 120, 34 Indian Penal Code, 1860 and Sections 4 and 6 of Protection of Children from Sexual Offences Act, 2012 at Police Station Urban Estate Rohtak, District Rohtak.
2.
- The petitioner initially filed a petition being CRM-M-51268-2023 for grant of anticipatory bail. On 10.10.2023, in the said petition, the counsel for the petitioner, after arguing for some time, sought liberty to avail his alternate remedies and stated that the petitioner was ready and willing to appear and surrender before the Juvenile Justice Board concerned. In view of the limited prayer made by the counsel for the petitioner, the petition was disposed off with a direction to the petitioner to appear and surrender before the Juvenile Justice Board concerned within a period of 10 days from the date of passing of the order i.e. 10.10.2023 and till then it was directed that

no coercive steps be taken against the petitioner. The petitioner failed to appear before the Juvenile Justice Board and instead filed CRWP-10893-2023 which was an omnibus petition seeking various reliefs including a blanket protection from arrest and quashing of the FIR. When no interim relief was granted on the first date of hearing i.e. 08.11.2023 in CRWP-10893-2023, the petitioner challenged the order dated 10.10.2023 passed in CRM-M-51268-2023 before the Hon'ble Supreme Court by filing Special Leave to Appeal (Crl.) No.15843 of 2023 wherein the following order was passed on 13.12.2023 :

*“1. Issue notice, returnable on 08.01.2024.
2. Having regard to the submissions made by the learned senior Counsel, Mr. Yatendra Singh that the petitioner is a student of Class XII - Science Stream and his pre-Boards examination are scheduled to commence from 14.12.2023, and that if he is not allowed interim protection, his career will be ruined, it is directed that the petitioner shall not be arrested in connection with the F.I.R. No.333 of 2023 dated 16.09.2023 registered at Urban Estate Police Station, Rohtak, till the returnable date, subject to the condition that the petitioner shall cooperate with the investigation.”*

3. Vide a detailed order dated 20.12.2023 CRWP-10893-2023 was dismissed. In the order dated 20.12.2023 it has been noticed that the learned State counsel therein had brought to the notice of the Court that despite the

order passed by the Hon'ble Supreme Court on 13.12.2023 the petitioner had not joined investigation even after his father was duly informed.

4. The Hon'ble Supreme Court dismissed the Special Leave to Appeal (Crl.) No.15843 of 2023 vide order dated 11.03.2024 which reads as under :

“1. Exemption Application is allowed.

2. Heard the learned counsel appearing for the petitioner and perused the material placed on record.

3. It appears that the counsel for the petitioner appearing in the High Court had requested the High Court to permit him to avail alternative remedy, and had made a statement that the petitioner is ready and willing to appear and surrender before the Juvenile Justice Board.

4. In view of the said statement, the High Court has permitted the petitioner to move an application for bail under Section 12 of the Juvenile Justice (Care and Protection of Children), Act, 2015. The petitioner instead of respecting the said statement made on his behalf by his counsel, has challenged the said order by way of the present petition.

5. Since the petitioner had to appear in the Board Examination which was likely to continue upto 9th March, 2024, this Court had vide order dated

08.01.2024 continued the interim relief granted till 11.03.2024.

6. Today, the learned counsel for the petitioner states that the Board Examination has been extended till 02.04.2024.

7. Since the High Court had disposed of the petition on the statement made by the learned counsel on behalf of the petitioner without examining the matter on merits, we do not wish to entertain the present petition or continue the interim order.

8. It will be open for the petitioner to approach the High Court by appropriate proceedings as may be permitted under the law.

9. Subject to the aforesaid observations, the Special Leave Petition is dismissed.”

5. A perusal of the order dated 11.03.2024 passed by the Hon’ble Supreme Court clearly reveals that interim relief was granted to the petitioner only till 11.03.2024. On 11.03.2024 the counsel for the petitioner had stated that the Board Examination has been extended till 02.04.2024. However, the interim relief was not extended by the Hon’ble Supreme Court and the Special Leave Petition was dismissed. Now the present petition has been filed seeking in effect extension of the interim relief which was granted by the Hon’ble Supreme Court.

6. Learned counsel for the petitioner would contend that a petition under Section 438 Code of Criminal Procedure, 1973 would be maintainable for grant of anticipatory bail. In support of his contentions learned counsel for the petitioner has relied upon the following judgments :

- a. Allahabad High Court in **Mohammad Zaid V/s State of U.P. & Anr. [2023 (248) AIC 923]**
- b. Bombay High Court in **Raman & Ors. V/s The State of Maharashtra & Ors. [2022 ALL MR (Cri) 3316]**
- c. Chhatisgarh High Court in **Sudhir Sharma V/s State of Chhatisgarh [2017 (3) CGLJ 405]**
- d. Madhya Pradesh High Court in **Ankesh Gurjar @ Ankit Gurjar V/s State of Madhya Pradesh [2021 (1) JabLJ 357]** and in **Miss A V/s State of Madhya Pradesh [2019 ILR (MP) 662]**
- e. Punjab and Haryana High Court in **Amandeep Singh @ Akash (Minor) V/s State of Punjab [2021 (1) Law Herald 438]** and in **Krishan Kumar (Minor) V/s State of Haryana [2020 (3) RCR (Criminal) 180]**
- f. Kerala High Court in **XXXXXX V/s State of Kerala & Ors. [2023 (1) Crimes 513]** and in **Mr. X (Prashob) V/s State of Kerala [2018 (3) RCR (Criminal) 327]**.

It is further the contention of the counsel for the petitioner that the exams of the petitioner have been extended till 02.04.2024 and hence he be protected.

7. Heard.

8. In the present case it is to be noted that the previous petition which was filed by the petitioner being CRM-M-51268-2023 was disposed off on the statement of the counsel for the petitioner that the petitioner would appear and surrender before the Juvenile Justice Board concerned within a period of 10 days from the passing of the order i.e. 10.10.2023. The petitioner failed to appear before the Juvenile Justice Board and instead filed CRWP-10893-2023 seeking various reliefs including a blanket protection from arrest and quashing of the FIR. No interim relief was granted on the first date of hearing i.e. 08.11.2023 in the said CRWP-10893-2023. The petitioner thereafter challenged the order dated 10.10.2023 passed in CRM-M-51268-2023 before the Hon'ble Supreme Court by filing Special Leave to Appeal (Crl.) No.15843 of 2023. The Hon'ble Supreme Court granted the petitioner interim relief on 13.12.2023 subject to the condition that the petitioner shall co-operate with the investigation. On 20.12.2023 CRWP-10893-2023 was dismissed by this Court by a detailed order. It has been noticed in the said order that the petitioner had not joined investigation despite the directions issued by the Hon'ble Supreme Court while granting interim relief on 13.12.2023.

9. The Hon'ble Supreme Court vide order dated 08.01.2024 granted extension of the interim relief on the ground that the petitioner's Board Examinations were likely to continue till 09.03.2024 and the matter was adjourned to 11.03.2024. On 11.03.2024 a specific submission was made to the Hon'ble Supreme Court that the Board examination has been

extended till 02.04.2024. However, the Hon'ble Apex Court did not grant any extension of the interim order and infact Special Leave to Appeal (Crl.) No.15843 of 2023 was dismissed.

10. There is no occasion for this Court to entertain the second petition for grant of anticipatory bail and rehear the matter. Moreover, this very request was declined by the Hon'ble Supreme Court and no extension of the interim relief was granted. The judgments relied upon by the counsel for the petitioner would be of no avail as the same are distinguishable on facts. In the present case CRM-M-51268-2023 was disposed off on the statement of the counsel that the petitioner would surrender before the Juvenile Justice Board and for the said purpose the petitioner was protected for 10 days. Till today there has been no compliance of the statement made on 10.10.2023. It appears that the petitioner instead of surrendering before the Juvenile Justice Board is filing one petition after another to circumvent the law. Grant anticipatory bail under Section 438 CrPC is an exceptional power and is exercised only in exceptional cases and not as a matter of course. Moreover, law aides only the abiding and certainly not its resistant.

11. In view of the above, this Court is not inclined to entertain the present petition. Dismissed. Pending applications, if any, also stand disposed off.

22.03.2024
Aman Jain

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO