

WWW.LIVELAW.IN

IN THE HIGH COURT FOR THE STATE OF TELANGANA

AT: HYDERABAD

CORAM:

***THE HON'BLE SRI JUSTICE K. LAKSHMAN**

+ WRIT PETITION No.12422 OF 2021

% Delivered on: 21-06-2021

Between:

Mr. Mohammed Bin Ziyad, a minor, rep.

By his mother Smt. Noor

.. Petitioner

Vs.

\$ The State of Telangana & another

.. Respondents

! For Petitioner

: Mr. M.A. Mujeeb

^ For Respondents

: Mr. S. Rama Mohan Rao,
Learned Asst. Govt. Pleader for Home

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> Head Note

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? Cases Referred

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1. CRR-725-2019 (O&M), decided on 08.01.2020
2. 2017 SCC OnLine Mad 28442
3. 2019 CrI.L.J. 4017
4. 2016 (2) ALT (CrI.) 81 (AP)
5. M.Cr.C. No.10345 of 2019, decided on 20.03.2019
6. 2010 (IV) MPJR 155
7. 2019 SCC OnLine 1794
8. R/CrI.Misc.App.No.6978 of 2021, decided on 09.06.2021

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HON'BLE SRI JUSTICE K. LAKSHMAN

WRIT PETITION No.12422 OF 2021

ORDER:

This Writ Petition is filed to declare the action of respondents in not releasing the petitioner Juvenile on bail in Crime No.175 of 2021 pending on the file of Chandrayanagutta Police Station, Hyderabad in the event of his arrest as illegal and contrary to Section - 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short 'JJ Act, 2015').

2. Heard Mr. M.A. Mujeeb, learned counsel for the petitioner and learned Assistant Government Pleader appearing on behalf of respondents - State.

3. The petitioner herein is sole accused in Crime No.175 of 2021. The offences alleged against him are under Section - 354 of IPC and Section - 7 read with Section 8 of the Protection of Children from Sexual Offences Act, 2012.

4. As per the complaint, the allegations against the petitioner are that, on 10.04.2021 at around 8.15 p.m., when *de facto* complainant went out to purchase grocery, he entered into her house, started touching the private parts of her daughter and torn her *kurti*. The daughter of *de facto* complainant pushed the petitioner away in order to save herself, he beat her with fist blows. However, her daughter escaped from the petitioner

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and informed her over phone. When the *de facto* complainant came from the market, the petitioner along with his friends was standing outside her house and when she objected, he also started beating her with fist blows on her neck, head, chest and stomach and touched her inappropriately. Then, she cried for help, on which he threatened her with dire consequences.

5. On receipt of the said complaint dated 12.04.2021, P.S. Chandrayanagutta have registered a case in Crime No.175 of 2021 for the aforesaid offences.

6. The petitioner herein aged about 17 years claiming to be a juvenile, filed an application under Section - 438 of Cr.P.C. seeking anticipatory bail before the learned I Additional Metropolitan Sessions Judge, Nampally, Hyderabad, and the same was returned with the following objections:

“ 1) This petition is filed u/s.438 Cr.P.C. by the counsel for petitioner/accused for the offence u/s.354 IPC, 7 r/w 8 of POCSO Act in Cr.175/21 of PS. Chandrayanagutta. The petitioner is the mother of accused who's aged about 17 yrs. (Minor). Hence representing her son.

2) As per the citation filed along with this petition, observed that though there is no provision in CrPC, for grant of anticipatory bail, but even the High Court has powers to grant anticipatory bail in writ jurisdiction in appropriate Courts.

Returned, Sd/ 7/5”

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7. Referring to the said objections, Mr. M.A. Mujeeb, learned counsel for the petitioner would submit that writ petition is maintainable as the JJ Act, 2015 is silent with regard to anticipatory bail. In support of his contention, he has placed reliance on the principle laid down in **Kishan Kumar v. State of Haryana**¹.

8. On the other hand, Mr. S. Rama Mohan Rao, learned Assistant Government Pleader for Home, on instructions, would submit that the present writ petition filed by the petitioner, a juvenile, seeking anticipatory bail is not maintainable. There is no provision in the JJ Act, 2015 to grant anticipatory bail to a juvenile. According to him, the provisions of JJ Act, 2015 are very liberal in granting regular bail to a juvenile and, therefore, the petitioner has to avail remedy under Section - 12 of the JJ Act, 2015. Instead of doing so, the petitioner filed the present writ petition seeking anticipatory bail and, therefore, the same is not maintainable.

9. In view of the above rival submissions, the question that falls for consideration before this Court is:

Whether a juvenile can seek anticipatory bail, that too by way of writ petition?

10. To decide the aforesaid issue, according to this Court, it is relevant to refer to the aims and objects of the Juvenile Justice (Care and Protection of Children) Act, 2015, which is a Special Statute. Treatment

¹. CRR-725-2019 (O&M), decided on 08.01.2020

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of the child in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society are the stated objects and reasons for enacting 2015 Act.

i) It was also further object of the said Act that to consolidate and amend the law relating to children alleged and found to be in conflict with law and children in need of care and protection by catering to their basic needs through proper care, protection, development, treatment, social re-integration, by adopting a child-friendly approach in the adjudication and disposal of matters in the best interests of children and for their rehabilitation through processes provided, and institutions and bodies established, herein under and for matters connected therewith or incidental thereto. It is also relevant to refer that the provisions of the Constitution confer powers and impose duties, under Articles - 15 (3), 39 (e) & (f), 45 and 47 on the State to ensure that all the needs of children are met and that their basic human rights are fully protected. The Government of India has acceded on the 11th December, 1992 to the Convention on the Rights of the Child, adopted by the General Assembly of United Nations, which has prescribed a set of standards to be adhered to by all State parties in securing the best interest of the child.

ii) It is also relevant to note that the Legislature on a review of the working of the existing Children Act, on coming to a conclusion that

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much greater attention is required to be given to children who may be found in situations of social maladjustment, delinquency or neglect. The justice system as available for adults is not considered suitable for being applied to juvenile. It is also necessary that a uniform juvenile justice system should be available throughout the country which should make adequate provision for dealing with all aspects in the changing social, cultural and economic situation in the Country. There was need for larger involvement of informal systems and community based welfare agencies in the care, protection, treatment, development and rehabilitation of such juveniles.

iii) Therefore, in view of the said conclusions and during review, the Legislature has enacted a Juvenile Justice Act, 1986 with an object to provide for the care, protection, treatment, development and rehabilitation of neglected or delinquent juveniles and for the adjudication of certain matters relating to and disposition of, delinquent juveniles. Thereafter, on consideration of the latest developments and also the decisions taken in various Conventions, the said Juvenile Justice Act, 1986 was replaced with Juvenile Justice (Care and Protection of Children) Act, 2000. On further review and on further consideration of various aspects, to make comprehensive provisions for children alleged and found to be in conflict with law and children in need of care and protection, taking into consideration the standards prescribed in the Convention on the Rights of the Child, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (the Beijing Rules), the United Nations Rules for the Protection of Juveniles

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Deprived of their Liberty (1990), the Hague Convention on Protection of Children and Co-operation in respect of Inter-Country Adoption (1993), and other related international instruments were considered and reviewed. Therefore, to consolidate and amend the law relating to children alleged and found to be in conflict with law and children in need of care and protection by catering to their basic needs through proper care, protection, development, treatment etc., an enactment was introduced as the Juvenile Justice (Care and Protection of Children) Act, 2015 vide Act No.2 of 2016. Thus, it is a special enactment.

11. In this regard, it is apposite to refer the relevant provisions of JJ Act, 2015, which are as under:

i) Section - 4 deals with 'constitution and composition of Juvenile Justice Board and appointment of Members etc.

ii) Section - 7 deals with procedure in relation to Board including meetings etc.

iii) Section - 8 deals with powers, functions and responsibilities of the Board, which is as under:

“Section - 8 Powers, functions and responsibilities of the Board.—

(1) Notwithstanding anything contained in any other law for the time being in force but save as otherwise expressly provided in this Act, the Board constituted for any district shall have the power to deal exclusively with all the

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proceedings under this Act, relating to children in conflict with law, in the area of jurisdiction of such Board.

(2) The powers conferred on the Board by or under this Act may also be exercised by the High Court and the Children's Court, when the proceedings come before them under section 19 or in appeal, revision or otherwise.

(3) The functions and responsibilities of the Board shall include—

(a) ensuring the informed participation of the child and the parent or guardian, in every step of the process;

(b) ensuring that the child's rights are protected throughout the process of apprehending the child, inquiry, aftercare and rehabilitation;

(c) ensuring availability of legal aid for the child through the legal services institutions;

(d) wherever necessary the Board shall provide an interpreter or translator, having such qualifications, experience, and on payment of such fees as may be prescribed, to the child if he fails to understand the language used in the proceedings;

(e) directing the Probation Officer, or in case a Probation Officer is not available to the Child Welfare Officer or a social worker, to undertake a social investigation into the case and submit a social investigation report within a period of fifteen days from the date of first production before the Board to ascertain the circumstances in which the alleged offence was committed;

(f) adjudicate and dispose of cases of children in conflict with law in accordance with the process of inquiry specified in section 14;

(g) transferring to the Committee, matters concerning the child alleged to be in conflict with law, stated to be in need of care and protection at any stage, thereby recognising that a child in conflict with law can also be a child in need of care simultaneously and there is a need for the Committee and the Board to be both involved;

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- (h) disposing of the matter and passing a final order that includes an individual care plan for the child's rehabilitation, including follow up by the Probation Officer or the District Child Protection Unit or a member of a non-governmental organisation, as may be required;
- (i) conducting inquiry for declaring fit persons regarding care of children in conflict with law;
- (j) conducting at least one inspection visit every month of residential facilities for children in conflict with law and recommend action for improvement in quality of services to the District Child Protection Unit and the State Government;
- (k) order the police for registration of first information report for offences committed against any child in conflict with law, under this Act or any other law for the time being in force, on a complaint made in this regard;
- (l) order the police for registration of first information report for offences committed against any child in need of care and protection, under this Act or any other law for the time being in force, on a written complaint by a Committee in this regard;
- (m) conducting regular inspection of jails meant for adults to check if any child is lodged in such jails and take immediate measures for transfer of such a child to the observation home; and
- (n) any other function as may be prescribed.”

iv) Section - 10 deals with apprehension of child alleged to be in conflict with law, which is as under:

“10. Apprehension of child alleged to be in conflict with law.—

- (1) As soon as a child alleged to be in conflict with law is apprehended by the police, such child shall be placed under the charge of the special juvenile police unit or the designated child welfare police officer, who shall produce the child 15 before the Board without any loss of time but within a period of twenty-four hours of apprehending the

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child excluding the time necessary for the journey, from the place where such child was apprehended:

Provided that in no case, a child alleged to be in conflict with law shall be placed in a police lockup or lodged in a jail.

(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.”

v) Section - 12 deals with bail to a juvenile, which is as under:

“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 available 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:

Provided that such person shall not be so released if there appears reasonable grounds for believing that the release is likely to bring that person into association with

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any known criminal or expose the said person to moral, physical or psychological danger or the person's release would defeat the ends of justice, and the Board shall record the reasons for denying the bail and circumstances that led to such a decision.

(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 in such manner as may be prescribed until the person can be brought before a Board.

(3) When such person 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.”

12. A perusal of the scheme of the Act, there is no provision for grant of anticipatory bail.

13. A perusal of Sections - 437 and 439 of Cr.P.C. and Sections - 8, 10 and 12 of the JJ Act, 2015 would reveal that power in respect of grant of bail to a juvenile is more liberal in the nature of command

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under Section 12 (1). Whenever an apparent juvenile alleged to have committed a bailable or non-bailable offence is detained by the police or appears or brought before a Board, such person shall, notwithstanding anything contained in Cr.P.C. 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. The only rider for not releasing the apparent juvenile is that whenever there appears reasonable grounds for believing that the release is likely to bring that person (Juvenile) into association with any known criminal or expose the said person to moral, physical or psychological danger or his release would defeat the ends of justice, the Board shall record the reasons for denying the bail and circumstances that led to such a decision. The said rider as contained in proviso to Section 12 (1) requires the Board to record reasons for denying the bail. It would mean that ordinarily the bail is to be allowed to a juvenile. The denial being exceptional on certain reasons to be recorded by the Board as provided in the proviso. This special provision is not there under Section - 439 of Cr.P.C.

14. It is relevant to note that the word “shall” is used in Section - 12 of JJ Act, 2015. Therefore, at the time of consideration of bail under Section - 12 of the JJ Act, 2015 merits or nature of offence has no relevancy. As stated above, the word “shall” used in Section - 12 makes it mandatory for release of a juvenile in conflict with law on bail if there is no material on record to show that his release would defeat the ends of

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justice or there is no likelihood of he being associated with any criminal or expose himself to any danger.

15. It is also relevant to note that under the statutory scheme of the Act, 2015, a comprehensive provision has been made as to how a child in conflict with law has to be dealt with when he is apprehended and not released on bail. The said provisions are contained under sub-sections (2), (3) & (4) of Section - 12 of the JJ Act, 2015. Under the said provision, on denial of bail, such person (Juvenile) has to be kept in observation home in the manner prescribed until he is brought before the Board. It is also provided that when a child in conflict with law is unable to fulfill the conditions of bail within 7 days of the bail order, such child shall be produced before the Board for modification of the conditions of bail. The provisions *pari materia* are not available under Section - 439 of Cr.P.C. When the bail is granted to the juvenile is not in a position to satisfy the conditions of bail, it is not mandated under Cr.P.C. that such child shall be produced before the Board for modification of the conditions of bail. In the absence of this provision either in case of denial of bail or even when the bail is allowed under Section - 439 of Cr.P.C., but the conditions of bail are not satisfied, the juvenile would be deprived of his statutory right under Section - 12 (2), (3) & (4) of the JJ Act, 2015. It is precisely for this reason Section - 12 of the JJ Act, 2015 provides for overriding effect due to use of non-obstante clause, therefore, the post arrest bail of juvenile in conflict with law is required to be dealt with under the special provision

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contained in Section - 12 of the Act of 2015 and to the said extent it will exclude operation of Section - 437 or Section - 439 of Cr.P.C.

16. It is also relevant to note that the said issue of maintainability of anticipatory bail filed by the juvenile is no more *res integra*. A Division Bench of the Madras High Court in **K. Vignesh v. State rep.by the Inspector of Police**² had an occasion to consider the said aspect. The Division Bench after considering various provisions including Section - 438 of Cr.P.C. and Section - 12 of the JJ Act, 2015 and also the fact that lot of safeguards were provided to the child in conflict with law in the event the child is apprehended by the police held that the child in conflict with law cannot be arrested, the child in conflict with law need not apply for anticipatory bail. The legislature has consciously did not empower the police to arrest a child in conflict with law. Thus, it is manifestly clear that an application seeking anticipatory bail under Section - 438 of Cr.P.C. at the instance of a child in conflict with law is not at all maintainable. Similarly, a direction to the Juvenile Justice Board to release the child in conflict with law cannot be issued by the High Court in exercise of its inherent power saved under Section - 482 of Cr.P.C.

17. In **Tejram Nagrachi Juvenile v. State Of Chhattisgarh**³, a Division Bench of Chhattisgarh High Court had also an occasion to deal with maintainability of bail application of a juvenile and held that grant of bail to a juvenile is required to be dealt with under Section - 12 of the JJ Act, 2015 and not under Sections - 437 or 439 of Cr.P.C.

². 2017 SCC OnLine Mad 28442

³. 2019 Cri.L.J. 4017

18. In **Shaik Wazid v. State of A.P.**⁴ an issue as to whether a juvenile in conflict with law can be released on bail by invoking provisions of Sections - 437 and 439 of Cr.P.C. fell for consideration. In the said judgment, it was held that a juvenile has to take a shelter under Section - 12 of the JJ Act, 2015 but not under Sections - 437 and 439 of Cr.P.C.

19. In **Kishan Kumar**¹, the Punjab and Haryana High Court at Chandigarh held that juvenile has to avail remedy under Section - 12 of the JJ Act, 2015 for regular bail. It had exercised the discretion granting pre-arrest bail and held that Hgh Court has power to grant anticipatory bail in writ jurisdiction in appropriate cases.

20. In **Kamlesh Gurjar v. The State of Madhya Pradesh**⁵, the High Court of Madhya Pradesh at Indore, on consideration of the principle laid down by it earlier and also other High Courts held that anticipatory bail in respect of a juvenile is not maintainable and the juvenile has to avail remedy under Section - 12 of the JJ Act, 2015. It was also categorically held that for grant of anticipatory bail by a juvenile cannot be entertained by the High Court or the Court of Session by applying the provision contained under Section - 6(2) of the Act, and the powers conferred on the Board can be used by High Court and the Court of Session only when proceedings come before them in appeal, revision or otherwise except under Sections - 438 and 439 of Cr.P.C.

⁴. 2016 (2) ALT (CrI.) 81 (AP)

⁵. M.Cr.C. No.10345 of 2019, decided on 20.03.2019

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21. In **Kapil Durgawani v. State of Madhya Pradesh**⁶, the Madhya Pradesh High Court held that even the Juvenile Board has no jurisdiction to entertain anticipatory bail application. A similar view has been taken by the Chhattisgarh High Court in **Preetam Pathak v. State of Chhattisgarh [MCRC (A) No. 1104 of 2014]**.

22. In **Birbal Munda v. State of Jharkhand**⁷, the Jharkhand High Court considering the definitions and provisions of the JJ Act, 2015 held that anticipatory bail is maintainable.

23. In **Kureshi Irfan Hasambhai through Kureshi Kalubhai Hasambhai v. State of Gujarat**⁸, the Gujarat High Court considering the principle laid down by the Madhya Pradesh High Court in **Vinayak Pandey v. State of Madhya Pradesh [M.Cr.C. No.22489 of 2007]**, and also by referring to the principle laid down by the Madras High Court and also considering the facts of the said cases, granted anticipatory bail to the juvenile therein.

24. In view of the above said discussion and also considering the principle laid down by the Division Bench of Madras High Court in **Vignesh**², I disagree with the principle laid down by the Punjab and Haryana High Court in **Kishan Kumar**¹ and also the Gujarat High Court in **Kureshi Irfan Hasambhai**⁸. I respectfully agree with the principle laid down by the Division Bench of Madras High Court in **K. Vignesh**². Thus, according to this Court, filing of an anticipatory bail application by

⁶. 2010 (IV) MPJR 155

⁷. 2019 SCC OnLine 1794

⁸. R/Crl.Misc.App.No.6978 of 2021, decided on 09.06.2021

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a juvenile under Section - 438 of Cr.P.C. in a writ petition is not maintainable, and that the juvenile has to avail the remedy under Section - 12 of the JJ Act, 2015.

25. In view of the above discussion, coming to the case on hand, *prima facie*, there are serious allegations against the petitioner mentioned above.

26. For the foregoing discussion, this Writ Petition is dismissed, however, liberty is granted to the petitioner to avail remedy under Section - 12 of the JJ Act, 2015. In the circumstances of the case, there shall be no order as to costs.

As a sequel, the miscellaneous petitions, if any, pending in the writ petition shall stand closed.

K. LAKSHMAN, J

21st JUNE, 2021

Note: L.R. Copy to be marked
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