

(2020) 12 P&H CK 0428

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous Petition (M) No. 43858 Of 2020

Amandeep Singh @ Akash (Minor) Through His Father

APPELLANT

Vs

State Of Punjab

RESPONDENT

Date of Decision : 24-12-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438, 438(2)

Indian Penal Code, 1860 — Section RAJBIR SEHRAWAT, 149, 326

Constitution Of India, 1950 — Article 14

Citation : (2020) 12 P&H CK 0428

Hon'ble Judges : Rajbir Sehrawat, J

Bench : Single Bench

Advocate : Karan Nehra

Final Decision : Allowed

Judgement

Rajbir Sehrawat, J

The present petition has been filed by the petitioner through his father under Section 438 Cr.P.C for grant of anticipatory bail in case FIR No. 94 dated

18.11.2020, registered under Sections 326, 148 & 149 IPC, at Police Station Amir Khas, District Fazilka.

It is contended by the learned counsel for the petitioner that the case against the petitioner is totally concocted and is without any basis. Even as per

the allegations of the prosecution, no injury is attributed to the petitioner. The only allegation against the petitioner is that the petitioner was also one of

the assailants. It is also submitted that the petitioner is juvenile by age. Although the petitioner had applied for anticipatory bail before the Sessions

Court, however, that application has been declined on an assumption that the Sessions Court does not have any power to entertain an application for

anticipatory bail filed by a juvenile. But there is no such provision under Section 438 Cr.P.C. which denies a juvenile the right to move an application

for seeking anticipatory bail. It is also submitted that there is no other case against the petitioner.

Notice of motion.

Mr. Dhruv Dayal, Senior DAG, Punjab, accepts notice on behalf of the State. Mr. Paras Jhamb, Advocate, has put in appearance on behalf of the complainant.

It has been argued by the counsel for the State, being instructed by ASI Harmeet Lal and being assisted by the counsel for the complainant, that the petitioner was one of the persons who had assailed the injured. The injured has suffered serious injuries at the hands of Babu Singh in that incident.

The injuries are so serious that the doctor had taken quite a long time even in conducting the operation. However, it is not disputed that no specific injury is attributed to the petitioner as such. It is also not disputed that the injury inviting Section 326 IPC is not attributable to the petitioner, by any means.

In view of the above, this Court is of the view that the petitioner deserves to be protected against his arrest.

Although the Court of Additional Sessions Judge, Fazilka has dismissed the application filed by the petitioner only on the ground that the Sessions

Court have no jurisdiction to entertain the application under Section 438 Cr.P.C. moved on behalf of the juvenile, so as to grant anticipatory bail,

however, this Court does not find any such prohibition, either in the provisions of Section 438 Cr.P.C. or in any other provision contained in the

Juvenile Justice (Care and Protection of Children) Act, 2015. Although this Act provides protection to the petitioner against keeping him in jail and also

contain the provisions mandating grant of bail pending trial to a juvenile unless there are certain prohibiting factors, as prescribed under that Act,

however, that aspect is relating only to grant of regular bail to a juvenile. Simply because there are special provisions made for grant of bail to a

juvenile, would not dilute his right to approach a Court under Section 438 Cr.P.C. so as to seek protection against his arrest. Provision of Section 438

Cr.P.C. has to apply to the juvenile and to the adult offenders in equal measure. There cannot be any discrimination against juvenile in the matter of

consideration for grant of anticipatory bail because that would be denial of his fundamental right under Article 14 of the Constitution of India. Needless

to say, that the protection against arrest and against keeping in custody even for the statutory period and grant of regular bail after a person has been

arrested and kept in custody, are altogether two different aspects having different connotations and consequences. Arrest of a person and keeping him

in custody, in any form, whatsoever, for a crime; attaches a kind of disqualification/stigma to the character of a person so arrested and deprives him of

certain benefits in other collateral fields. Whereas, if a person is protected against his arrest by granting him anticipatory bail, then such a person can

be saved of such a ignominious stigmatic aspect, which otherwise would have been attached to him for all the times to come. Hence, a juvenile is as

much entitled to avail the benefits under Section 438 of Cr.P.C. as any other citizen is entitled.

In view of the above, but without commenting any further on the merits of the case, the present petition is allowed. In the event of arrest, the

petitioner shall be released on bail subject to his furnishing personal bonds/surety to the satisfaction of Arresting/Investigating Officer. However, the

petitioner shall join the investigation as and when called upon to do so and shall abide by the conditions as provided under Section 438(2) Cr.P.C.