

(2016) 01 MAD CK 0142

In the Madras High Court

Case No : Crl. O.P. (MD) No. 177 of 2016

M. Kannadasan and Others

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 07-01-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 438, Section 439, Section 482
Juvenile Justice (Care and Protection of Children) Act, 2000 — Section 12, Section 12(1), Section 4, Section 52, Section 53, Section 6, Section 6(2)
Penal Cod

Citation : (2016) 01 MAD CK 0142

Hon'ble Judges : S. Vaidyanathan, J.

Bench : Single Bench

Advocate : R. Balakrishnan, for the Appellant; A.P. Balasubramani, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

S. Vaidyanathan, J.—1. The petitioner, who apprehends arrest for the offences punishable under Sections 447 of IPC and Section 7 of Children from Sexual Offences Act, 2012, in connection with the case in Crime No. 236 of 2015, on the file of the respondent police, moved this petition seeking a direction to the Juvenile Justice Board, Tirunelveli, to consider the bail application of the petitioner/minor Suresh (16/2015), on the same day, on merits.

2. I have heard the counsel appearing on either side and perused the records.

3. The Government Advocate (Criminal side) strongly opposed the relief sought for by the petitioner.

4. According to Section 4 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as the "Act") Act, a duly constituted Juvenile Justice Board shall have the powers conferred by the Code of Criminal Procedure, 1973 on a Metropolitan Magistrate or, as the case may be, a Judicial Magistrate

First Class to consider the case of the petitioner. More particularly, Section 12(1) of the Act confers special powers to Juvenile Justice Board to grant bail to a juvenile, who is an accused of a bailable or non-bailable offence.

5. It is appropriate to refer to Section 12(1) of the Act, which is reproduced below:--

"Section 12. Bail of juvenile. - (1) When any person accused of a bailable or non-bailable offence, and apparently a juvenile, is arrested or detained or appears or is 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 but he shall not be so released if there appear reasonable grounds for believing that the release is likely to bring him into association with any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice."

(2) When such person having been arrested is not released on bail under sub-section (1) by the officer in- charge of the police station, such officer shall cause him to be kept only in observation home in the prescribed manner until he can be brought before a Board.

(3) When such person is not released on bail under sub-section (1) by the Board, it shall, instead of committing him to person make an order sending him, to an observation home or a place of safety for such a period during the pendency of the inquiry regarding him as may be specified in the order."

6. It is manifest that the above provision provides certain specific conditions for consideration for releasing a juvenile who is accused of a bailable or non-bailable offence, and the said special authorization begins with "notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force." According to Sub-section (i) of Section 12 of the Act, a Juvenile shall be released on bail with or without surety notwithstanding anything contained in the Code of Criminal Procedure, 1973 or in any other Law for the time being in force. The first part of the provision appears to be mandatory in nature for release of a Juvenile on bail, but the second part also equally appears to be mandatory for refusing bail, as a Juvenile shall not be so released if there appears reasonable ground for believing that;

"a. release of Juvenile is likely to bring him into association with any known criminal, or

b. expose him to moral, physical or psychological danger, or

c. that his release would defeat the ends of justice."

7. A Juvenile Justice Board has been constituted under Section 6 of the Act to deal exclusively with all proceedings in respect of a juvenile in conflict with law. Section 6 of the Act reads as under:

"Section 6. Powers of Juvenile Justice Board.--(1) Where a Board has been constituted for any district, such Board shall, notwithstanding anything contained in any other law for the time being in force but save as otherwise expressly provided in this Act, have power to deal exclusively with all proceedings under this Act relating to juvenile in conflict with law.

"(2) The powers conferred on the Board by or under this Act may also be exercised by the High Court and the Court of Session, when the proceeding comes before them in appeal, revision or otherwise."

8. A conjoint reading of Sections 6 and 12 of the Act would reveal that to deal with all the proceedings including bail, etc., in respect of juvenile, a Juvenile Board is the appropriate authority and it has been constituted exclusively for this purpose and no Court, either Sessions Court or High Court has jurisdiction to deal with the proceedings pertaining to a juvenile. Therefore, it is clear that the bail application of a juvenile can be entertained by the Board only when he is arrested or detained or appears or is brought before the Board, otherwise the application cannot be entertained. If the juvenile is arrested or detained or appears or is brought before the Board, then certainly bail application will be filed under Section 12 and the same has to be decided by the Board only, but not by the High Court or Court of Sessions. However, Section 52 of the Act gives right to a juvenile, who is accused of a bailable or non-bailable offence, if he has been refused bail, to file an appeal under Section 52 of the Act within 30 days from the date of such order or after the expiry of the said period if prevented by sufficient cause to prefer an appeal within time, to the Court of Sessions, and in case the appeal fails, he can file a revision against the appellate order before the High Court in accordance with Section 53 of the Act. Therefore, the Act specifically envisages that the powers conferred on the Board by or under this Act can be exercised by the High Court and the Court of Sessions, only when the proceeding comes before them in an appeal, revision or otherwise.

9. Such being the legal position, if any bail application filed by a juvenile is entertained by the High Court and rejected, certainly, the juvenile would be left with no option, since he would have been deprived of the right of appeal before the Court of Sessions and revision before the High Court. In fact, no provision in the Act or in the Code of Criminal Procedure enables the juvenile to move an application for anticipatory bail either before the Court of Sessions or High Court or even before the Board, which has been exclusively constituted for the purpose of dealing with the proceedings pertaining to a juvenile.

10. In this regard, it is worthwhile to refer the following decisions, viz.,

"(a) In "Satendra Sharma v. State of Madhya Pradesh" in Mc.Rc. No. 4183 of 2014, dated 8.7.2014, the High Court of Madhya Pradesh, has dealt with the similar issue regarding the anticipatory bail of a Juvenile and held as under in para 16, 21 to 23:

"16. On bare perusal of this provision, it is clear that the bail application of a

juvenile can be entertained by the Board only when he is arrested or detained or appears or is brought before the Board otherwise application cannot be entertained. If the juvenile is arrested or detained or appears or is brought before the Board then certainly bail application will be filed under Section 12 and the same be decided by the Board only but not by the High Court or Court of Session as discussed above."

....

21. The anticipatory bail can be granted in anticipation of arrest but such proceedings are not inserted in the Act. The only provision for bail of Juvenile is given under Section 12 of the Act which has been discussed as above.

22. In view of the aforesaid discussion, this Court is of the view that application for grant of anticipatory bail preferred by the 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. 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 Section 438 and 439 of Cr.P.C. Therefore, I respectfully disagree with the interpretation made by the learned Single Judge of the Hon. Rajasthan High Court and Hon. Chhattisgarh High Court.

23. Accordingly, application for grant of anticipatory bail by the applicant is hereby dismissed...."

(b) In "Kapil Durgawani v. State of Madhya Pradesh" reported in , 2010 (IV) MPJR 155, the High Court of Madhya Pradesh has even held that the Juvenile Board has no jurisdiction to entertain anticipatory bail application. Relevant portion of the decision is extracted as under:

"Provisions of Section 12 of the Act, 2000 do not provide such powers to the Board which is equivalent to Section 438 of Cr.P.C. The Board has no jurisdiction to entertain application under Section 438 of Cr.P.C."

(c) The above said view has been fortified by the High Court of Chhattisgarh in "Preetam Pathak v. State of Chhattisgarh" in M.Cr.C.(A) No. 1104 of 2014 and held as under:

"7. A close and careful perusal of Section 12 of the Act, 2000 would show that an application for bail of juvenile would be entertainable by the Board only if he is arrested and brought before the Board where he is accused of bailable or non-bailable offences and the condition precedent to the juvenile would be, he is arrested or detained or appears or is brought before a Board, then only his application filed under Section 12 of the Act, 2000 shall be decided by the Board. Apart from Section 12 of the Act, 2000, there is no other provisions in the Act, 2000 like Section 438 of Cr.P.C. giving powers to the Board to grant anticipatory bail to the juvenile and thus, power and jurisdiction to grant anticipatory bail has not been conferred to the juvenile Justice Board, and therefore, the provisions contained in Section 438 of Cr.P.C. cannot be exercised by this court or court of

session to grant anticipatory bail to the juvenile by virtue of provisions contained in Section 6(2) of the Act, 2000."

8. The aforesaid question came to be considered before the High Court of Madhya Pradesh in case of Kapil Durgawani v. State of Madhya Pradesh¹, in which, after consideration it has been held that provisions of Section 12 of the Act, 2000 do not provide such power to the Board which is equivalent to Section 438 of Cr.P.C. and the Board has no jurisdiction to entertain application under Section 438 of Cr.P.C. by holding as under: "Provisions of Section 12 of the Act, 2000, do not provide such powers to the Board which is equivalent to Section 438 of Cr.P.C. The Board has no jurisdiction to entertain application under Section 438 of Cr.P.C."

9. Again similar proposition has been reiterated by the MP High Court in case of "Sandeep Singh Tomar v. State of M.P.

10. I am in respectful agreement with the view taken by the High Court of Madhya Pradesh in Kapil Durgawani (Supra) and Sandeep Singh Tomar (Supra), and in the considered opinion of this court juvenile is not entitled to maintain application under Section 438 of Cr.P.C. in absence of specific provisions in the Act, 2000.

11. Accordingly, the application filed Section 438 of Cr.P.C. for anticipatory bail is dismissed as not maintainable in law."

11. In fact, the very object to promulgate the Juvenile Justice (Care and Protection of Children) Act, 2000 is to consolidate and amend the law relating to juveniles in conflict with law and children in need of care and protection, by providing proper care, protection and treatment by catering to their development needs, and by adopting a child-friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation through various institutions established under this enactment. Therefore, as already discussed above, when the Juvenile Board has been constituted as per the provisions of the Act, 2000 to deal exclusively with all proceedings in respect of a juvenile in conflict with law, no Court, either Sessions Court or High Court has jurisdiction to deal with the proceedings pertaining to a juvenile, otherwise, the very purpose of the object would be defeated. Accordingly, bail in respect of the juvenile has to be considered purely under the parameters of Section 12 of the said Act which, in fact, mandates grant of bail to a juvenile unless the Board feels that the release of the juvenile is likely to bring him into association of any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice.

12. In view of the above discussion, I am of the considered view that this petition filed under Section 482 Cr.P.C. for consideration of the bail application of the petitioner, who is admittedly a juvenile, is not maintainable and it is liable to be dismissed.

13. Accordingly, this petition seeking to consider the bail application of the petitioner by the Juvenile Justice Board, Tirunelveli, is hereby dismissed. However, the petitioner is at liberty to appear before the competent authority and thereafter, if he proves himself to be a juvenile, move an appropriate application for his release on bail under Section 12 of the Act and the same shall be considered by the competent authority in accordance with law.