

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRCA No. 549 of 2016****Order reserved on 05.08.2016****Order delivered on 06.10.2016**

- Sudhir Sharma S/o Chandrabhan Sharma Aged About 15 Years By Caste - Bramhan, R/o Ward No. 15 Sakti, Police Station & Tahsil - Sakti, Distt. Janjgir - Champa Chhattisgarh (Through His Natural Guardian Father Namely Chanrabhan Sharma S/o Late Dharam Das Sharma, Aged About 60 Years)
--- **Petitioner**

Versus

- State of Chhattisgarh Through, Station House Officer, Police Station - Sakti, Distt. Janjgir - Champa Chhattisgarh ---
Respondent

For the applicant :
For the Respondent :

Mr. Awadh Tripathi, Advocate.
Mr. Neeraj Jain, Govt. Advocate.

Hon'ble Shri Justice Goutam Bhaduri**C.A.V. Order**

1. This is first bail application filed under Section 438 of the Code of Criminal Procedure seeking grant of anticipatory bail to the applicant in connection with Crime No. 90 of 2016 registered at P.S. Sakti, Distt. Janjgir Champa (C.G) for the offence punishable under Sections 341, 294, 506, 186, 332, 353/34 of IPC.
2. As per the prosecution case, on 31.03.2016 complainant Vijay Kumar Patel who is a driver to the S.D.O(P) was going to his office from his official residence. On the way at about 9.30 a.m., when he reached near Dukal Sagar Talab Road, at that time, the other accused Chandra Bhan and his son

Sudhir Sharma (the present applicant) were going on a motorcycle bearing Regn. No.C.G.11-A.E/4708 and it was driven in rash and negligent manner. Upon which, the complainant advised them to drive slow. On such advice the applicant and his father got enraged and abused the complainant and also extended threat to kill him and thereby he was restrained to discharge his official duties.

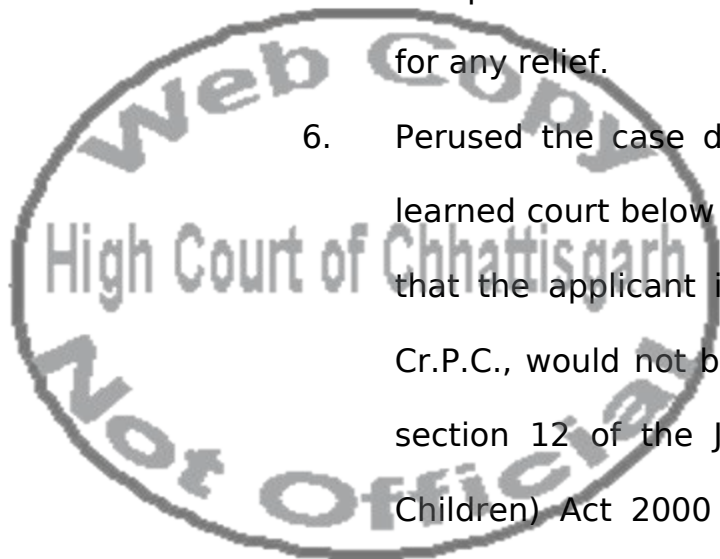
3. Learned counsel for the applicant would submit that in fact the applicant along-with his father was going on motorcycle and since the applicants were stopped for the reason that they had not put on helmet, therefore, a fine amount of Rs.500/- was imposed which was paid. Subsequently when the receipt was asked for, the complainant refused to issue any receipt for the same and tried to snatch the key of vehicle, on which, altercations took place between them . It is stated that in order to avoid the consequences of non-issuance of receipt, a false report has been made.

4. Learned counsel for the applicant submits that the learned court below has dismissed the application for anticipatory bail only on the ground that as the applicant is a juvenile, the petition u/s 438 Cr.P.C., would not be maintainable. It is stated that such finding is based on a dictum laid down in M.Cr.C(A). No.1104 of 2014 between Preetam Pathak Vs. State of Chhattisgarh decided on 17.12.2014. The counsel Per contra, has placed reliance on a case reported in **2005 (1) CGLJ 320 – Mohan Vs. State of C.G.** and would submit that the recent decision is contrary to the decision rendered earlier and judicial discipline is an inbuilt mechanism of system itself and in case of disagreement, the

same should have been placed before the larger Bench. It is further submitted that in any case, the juvenile cannot be denied the benefit of anticipatory bail. It is contended that the judgment rendered in *2005 (1) CGLJ 320* (supra) still holds the field, therefore, as per the law of precedent, the same cannot be sidelined and the court below should have followed the law laid down in *2005(1) CGLJ 320 (supra)* and accordingly the court should have allowed the bail petition in the facts of this case.

5. Learned State Counsel opposes the bail and submits that the bail petition is not tenable and the applicant is not entitled for any relief.

6. Perused the case diary and the documents. Primarily the learned court below has dismissed the petition on the ground that the applicant is juvenile as such the petition u/s 438 Cr.P.C., would not be tenable. Reference has been made to section 12 of the Juvenile Justice (Care and Protection of Children) Act 2000 (hereinafter referred to as the "Act of 2000") and further reliance is placed on the recent dictum rendered in M.Cr.C(A). No.1104 of 2014 (Supra). A perusal of the case diary would reveal that the offence in the instant case is alleged to have been committed on 31.03.2016. The new Act of 2015 i.e., The Juvenile Justice (Care and Protection of Children) Act 2015 (hereinafter called as the "Act of 2015") received the assent of President on 31st December, 2015 and the Act of 2015 was published in the Gazette of India (Extraordinary) Part-II Section-1 on 01.01.2016, therefore, on the date of incident, the new Act was applicable.



7. Chapter IV of the Act 2015 provides for procedure in relation to children in conflict with law, their arrest and bail. Section 10 thereof deals with “apprehension of child alleged to be in conflict with law” and mandates that the moment when the juvenile is apprehended by the police the procedure u/s 10 of the Act would come into play. At this juncture, since the word 'apprehend' has been used in the statute, it will have the necessary significance. Interpreting the word 'apprehended' by its meaning as per the Oxford English Dictionary, the word “apprehend” is defined as ‘arrest someone for a crime’. Similarly according to Legal Glossary, the meaning of the word “Apprehend” is explained *to seize in the name of law; to arrest; to lay hold upon*. Therefore, plain reading of section 10 of the Act, 2015 would indicate that the moment when the juvenile is arrested he should be placed under the Special Juvenile Police Unit or the designated Child Welfare Police Officer who will be under the bounden duty to produce him before the Board within a period of 24 hours of apprehending the child excluding the time necessary for the journey from the place where the child is apprehended.

8. Thereafter, section 11 casts a statutory duty of the person in whose charge the child in conflict with law is placed and mandates that it shall have the responsibility of child as parent thereof and the Board may decide the custody of child. Then section 12 of the Act 2015 comes into play. Sub-section (1) of Section 12 deals with grant of bail. Since this section would have a direct involvement in the facts of the case, as such, necessary part of it is reproduced herein-

below :

“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 bailable 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 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.”

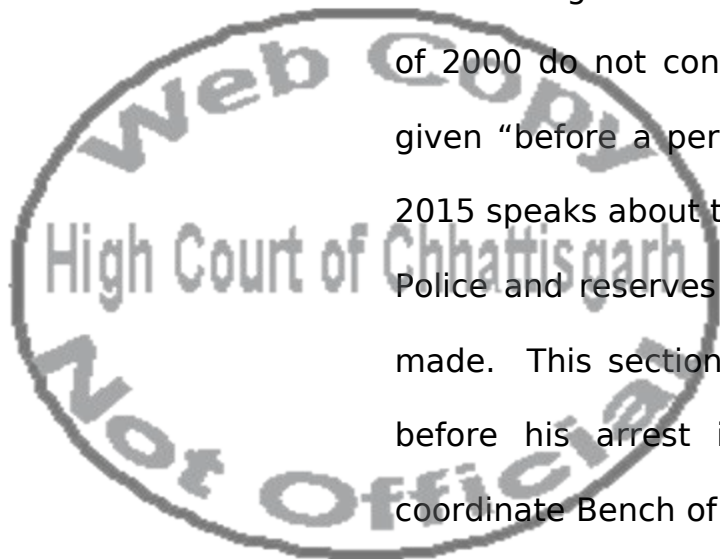
(2) xxx xxx xxx

(3) xxx xxx xxx

9. If further reference is made to Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as the Act of 2000), section 12 of the Act of 2000 also deals with bail to the juvenile. The section purports that when any person accused of 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 or in any other law for the time being in force, he would be released on bail with or without surety or placed under the

supervision of a Probation Officer or under the care of any proper institution or proper person. Therefore, conjoint reading of section 12 of the Act 2000 and thereafter the Act of 2015 would show that the principle governing the bail and the laudable object of the statute is one and the same except certain change of word as in the new Act of 2015, the word “apprehend” has been used. Therefore, the question arises for consideration in this case is whether the Act of 2015 takes away the power and jurisdiction of the High Court and Sessions Court u/s 438 of Cr.P.C.

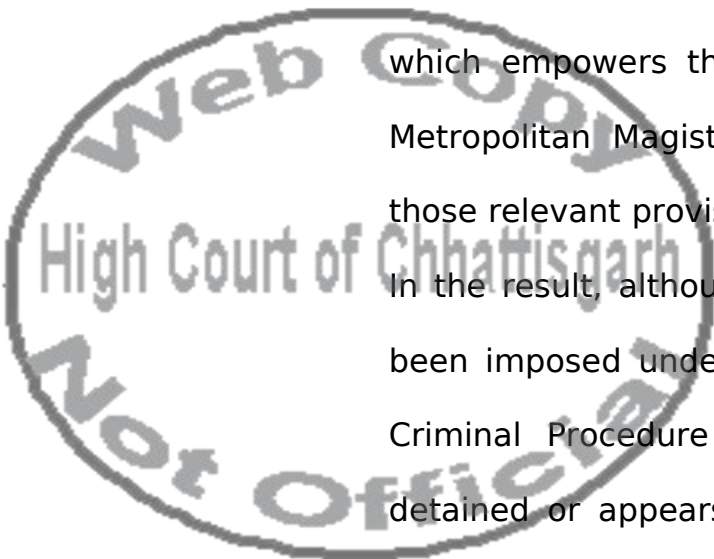
10. The reading of section 12 both in the Act of 2015 and the Act of 2000 do not contemplate a situation for the relief to be given “before a person is arrested”. Section 12 of the Act, 2015 speaks about the bail when a juvenile is arrested by the Police and reserves the right of juvenile after the arrest is made. This section do not speak of the right of a juvenile before his arrest is made. As has been held by the coordinate Bench of this Court in *2005 (1) CGLJ 320 – Mohan Vs. State (supra)*, which deals with situation while the Act of 2000 was operative that the provisions of section 12(1) provides certain specific condition for consideration of bail of a juvenile who is accused of bailable or non-bailable offence and the said special authorization begins with “notwithstanding anything contained in the Code of Criminal Procedure” and the said non-obstante clause is appended in that case with a view to give the enacting part of this section. In case of conflict it will have an overriding effect over the provisions of Code of Criminal Procedure. It was further held that the said non-obstante clause does not take



away various provisions of bail but only removes various barriers, and authorizes that in spite of various barriers, the conditions enumerated in section 12 of the Act 2000 shall prevail while considering the matter of granting or refusing the bail to juvenile, accused of a bailable or non-bailable offence.

11. It was further held that the Juvenile Justice Board has been conferred with the power of Judicial Magistrate First Class or Metropolitan Magistrate under the old Act of 2000. Therefore, the non-obstante clause contained in section 12 of the Act 2000 has over riding effect against those provisions which empowers the Judicial Magistrate First Class or the Metropolitan Magistrate to decide the matter of bail and those relevant provisions are Sections 437 and 438 of Cr.P.C. In the result, although certain barriers and limitations have been imposed under Sections 436 and 437 of the Code of Criminal Procedure for releasing the person arrested or detained or appears or is brought before a Court, yet the juvenile Justice Board, if conditions mentioned under Section 12 of the Act are fulfilled, has power to release the juvenile on bail.

12. According to the Act of 2015, section 12 also fall in line with the same principle which only covers the situation when the juvenile is arrested by the Police and after the arrest is made, the right to juvenile has been engrafted in the statute. Therefore, a juvenile in conflict with law contemplating his arrest in a non-bailable offence, no doubt, will be entitled to seek the discretionary relief of pre-arrest bail envisaged under Section 438 of the Code. That section takes within its



ambit “any person” to seek such relief when he has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence. “Person” is not defined under the Code. However, it is to be noticed where the word is not defined under the Code, the definition, if any, given for such word in the IPC has to be assigned for such word used in the Code. Section 2(y) of the Code states thus.

“2. Definitions :- In this Code, unless the context otherwise requires,--

xxxxx xxxxx xxxxx

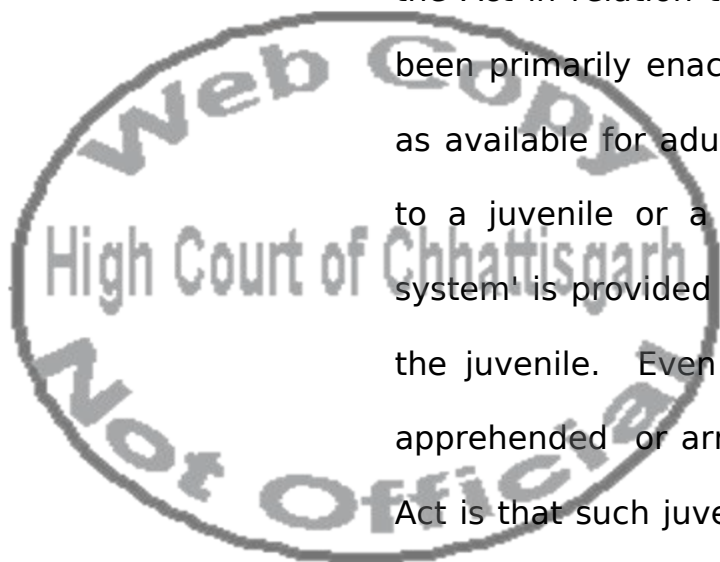
words and expressions used herein and not defined but defined in the Indian Penal Code (45 of 1860) have the meanings respectively assigned to them in that Code.”

Further the definition clause of Section 2(61) of the Act of 2015 also allows to make a reference to other Act. Section 2(61) of The Juvenile Justice (Care and Protection of Children) Act, 2015 reads as under :

“2(61) - all words and expressions used but not defined in this Act and defined in other Acts shall have the meanings respectively assigned to them in those Acts.”

In the IPC, under Section 11, “person” is defined and it takes within its ambit any company or association or body of persons, whether incorporated or not. Section 10 of the IPC defines 'man' as a male human being and 'woman' as a female human being, both of them, of any age. So much so, the juvenile in conflict with law who also comes within the meaning of “person” covered by Section 438 of the Code is entitled to canvass for the discretionary relief thereunder.

13. Therefore, the right of juvenile or juvenile in conflict with law to seek pre-arrest bail having apprehension of his arrest on accusation of non-bailable offence should not be the decisive question that may emerge for consideration when such a request is made by such a person i.e., juvenile. That has necessarily to be considered and examined with reference to the laudable objectives behind the enacting of the Act and the duty cast upon the Court to see that the right of a juvenile or juvenile in conflict with law is not in any way impaired. More so, to ensure that none of the provisions of the Act in relation to such juvenile is violated. The Act has been primarily enacted taking note that the justice system as available for adults is not suitable and cannot be applied to a juvenile or a child. A new system 'Juvenile Justice system' is provided under the Act to protect the interests of the juvenile. Even when a juvenile in conflict with law is apprehended or arrested by the police, the mandate of the Act is that such juvenile shall be placed under the charge of the special juvenile police unit or the designated Police Officer. What should be done on apprehension of a juvenile in conflict with law is covered by Section 10 of the Act 2015. Chapter IV of the Act 2015 therefore comes into play when the juvenile is arrested and the procedure of keeping the juvenile in a specially protected environment is mandated. So the statutory protection exists to insulate the juvenile or the child when he is arrested as envisaged under the Act.
14. In these contexts, in the opinion of this Court, if it is interpreted in a way that the juveniles do not have any right under Section 438 Cr.P.C., to move any application or to



invoke the jurisdiction of the Court, it will amount to taking away the right which is guaranteed to a juvenile/person under the criminal procedure code. In the opinion of this Court, this harmonious purposive interpretation has to be made to protect the right of juvenile evaluating the degree of protection and segregation provided to juvenile after his arrest. As a result, the right of juvenile cannot be shelved or alienated before the arrest is made. The intention of legislature under the Act of 2015 appears to protect the juvenile and not to treat him at par with the other persons and does not come in any conflict to suppress the right of juvenile guaranteed to him by the provisions of Section 438 Cr.P.C.

15. In a consequence curtailing the right of juvenile u/s 438 Cr.P.C., and to hold that the juveniles do not have any right to file application or seek remedy to invoke the jurisdiction of Sessions Court or the High Court u/s 438 Cr.P.C., in the opinion of this Court, cannot be sustained.

16. In view of the above discussion, I am in respectful disagreement with the view taken by the coordinate Bench in M.Cr.C.No.1104/2014 (Preetam Pathak Vs. State of Chhattisgarh) wherein the Coordinate Bench by placing reliance in *2010 (IV) MPJR 155 Kapil Durgwani Vs. State of Madhya Pradesh* and *2014 (IV) MPJR 49 Sandeep Singh Tomar Vs. State of M.P.*, has held that the right to juvenile u/s 438 Cr.P.C., is not available. A close reading of decision reported in *2010 4 MPJR 155* would show that in case of *Kapil Durgwani* (supra) analyzing the provision, it was deliberated that the provisions of bar of section 18 of SC/ST

Act of 1989 in the context of Section 12 of the Act of 2000 was considered and predominantly it was held that the Act of 2000 do not give any power to Board which is equivalent to Section 438 of Cr.P.C., and thus the Board has no jurisdiction to decide the application u/s 438 of Cr.P.C. It was further observed that as per the provisions of Section 6 of the Juvenile Act, the powers of the Board can be exercised by the Court of Sessions as well as the High Court in an appeal, revision or otherwise and if the Board constituted under the Juvenile Act rejects a bail application of the Juvenile, an appeal shall lie to the Sessions Court and against the order of the Sessions Court, revision may be preferred to High Court. Therefore, if the bail application is decided by the High Court for the first time and it is rejected, then the opportunity of appeal and revision will be lost by the juvenile. Thus directly approaching the High Court under the provisions of Section 438 of Cr.P.C., shall result in a loss of opportunity to prefer an appeal and revision to a juvenile, therefore, such practice should be discouraged.

17. In *2014 (IV) MPJR 49 Sandeep Singh Tomar (supra)* it was held that reading of section 12(1) of the Act 2000 discloses that it applies to juveniles who have been arrested and therefore does not pertain to a juvenile who apprehends arrest. Therefore in sum and substance it was held that the terminology used in Section 12(1) indicates that it does not relate to concept of anticipatory bail. However, the said provision excludes the operation of the Code of Criminal Procedure, but that exclusion pertains only to a juvenile who is either arrested or detained or appears or is brought before

a Board but not to a juvenile apprehending arrest. Therefore, principally it was held that by necessary implication, it points out that the application filed by the juvenile u/s 438 Cr.P.C., would lie.

18. In view of the foregoing discussion, I reiterate the disagreement with the view taken in judgment/order passed by the coordinate Bench of this Court in M.Cr.C(A).No.1104 of 2014 (*Preetam Pathak Vs. State of Chhattisgarh*) decided on 7.12.2014. In the result, I am of the considered view that the judgment delivered by this Court in M.Cr.C.No.1104/2014 (supra) requires to be reconsidered by a Bench of two Judges.

19. Therefore, let the matter be placed before Hon'ble the Chief Justice as provided in Rule 32 of the High Court of Chhattisgarh Rules, 2007 for being referred to a Bench of two Judges to be decided on the following issue.

“(1) Whether the application at the behest of a Juvenile before the Sessions Court or High Court u/s 438 Cr.P.C., would lie ?”

Sd/-

**GOUTAM BHADURI
JUDGE**