

Madhya Pradesh High Court

Ku. Laali vs The State Of Madhya Pradesh on 20 May, 2021

Author: Sheel Nagu

1 MCRC-24733-2021 THE HIGH COURT OF MADHYA PRADESH MCRC-24733-2021 (Ku. Laali Vs. State of M.P.) Gwalior, dated: 20.05.2021 Shri R.P. Gupta, learned counsel for the petitioner. Shri Nitin Goyal, learned Panel Lawyer for the State. Heard through video conferencing.

Case diary perused.

Petitioner has filed this first application u/S.438 Cr.P.C. for grant of anticipatory bail.

Petitioner apprehends arrest in connection with offence punishable u/S.306, 498-A, 34 of IPC registered as Crime NO.61/2021, by Police Station Antri, District Gwalior (M.P.).

Learned Panel Lawyer for the State opposed the application and prayed for its rejection by contending that on the basis of the allegations and the material available on record, no case for grant of anticipatory bail is made out.

Petitioner who is seeking anticipatory bail herein claims herself to be a juvenile as per date of birth of 01.01.2004 as against the date of incident being 09.03.2021.

As regards prayer for anticipatory bail made by petitioner, this court declines to enter into merits of the case in view of recent decision rendered by coordinate bench of this court, on 20/1/2021 in Criminal Revision No. 2112/2020 [Ankesh Gurjar @ Ankit Gurjar Vs. State of Madhya Pradesh & Misc. Cri. Case No. 41359/2020 [Sohil 2 MCRC-24733-2021 Khan Vs. State of Madhya Pradesh] in which of one us (Sheel Nagu, J.) was a member, held thus :-

"8. Section 12 of 2015 Act is a complete Code in itself qua the subject of bail. Interpreting the said provision to include the benefit of anticipatory bail would lead to stretching the limits laid down by the legislature. This Court cannot legislate and therefore SEC.12 by implication excludes the benefit of anticipatory bail. The legislature cannot be imputed to provide for a benefit which it did not intend to provide unless the provision textually reveals otherwise. More so, a fair reading of the provision of SEC.12 discloses the mind of the law makers that they were conscious of the absence of the concept of "custody" in police lock-up/jail and therefore did not intentionally provide for anticipatory bail. This Court cannot go beyond the parameters of SEC.12 laid down by the legislature. The view of this court is bolstered by decision of Apex Court in A.N. Roy, Commissioner of Police & Another Vs. Suresh Sham Singh (2006)5 SCC 745, relevant para of which is reproduced below:-

"23 It is now well settled principle of law that the Court cannot enlarge the scope of legislation or intention when the language of the statute is plain and unambiguous. Narrow and pedantic construction may not always be given effect to. Courts should avoid a construction, which would reduce the legislation to futility. It is also well

settled that every statute is to be interpreted without any violence to its language. It is also trite that when an expression is capable of more than one meaning, the court would attempt to resolve the ambiguity in a manner consistent with the purpose of the provision, having regard to the great consequences of the alternative constructions."

9. Thus, by the very nature of amenities made available to a juvenile in various institutions where he/she is kept from the stage of apprehension/detention up to conclusion of inquiry by the Board, it is evident as daylight that same are similar if not identical to the atmosphere and facility a child enjoys in parental home.

10. In the conspectus of above discussion, it is crystal clear that the concept of sending arrested/detained juvenile to police lockup or jail is foreign to the Scheme of 2015 Act and the Rules framed therein. As such there is no concept of "Arrest" as contemplated by Chapter V of Cr.P.C. containing procedure from Secs 41 to 60-A, in particular Sec. 46 which is reproduced below for ready reference and convenience:-
"46. Arrest how made (1) In making an arrest the police officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.

[Provided that where a woman is to be arrested, unless the circumstances indicate to the contrary, her submission to custody on an oral intimation of arrest shall be presumed and, unless the circumstances otherwise require or unless the police officer is a female, the police officer shall not touch the person of the woman for making her arrest.] (2) If such person forcibly resists the endeavour to arrest him, or attempts to evade the arrest, such police officer or other person may use all means necessary to effect the arrest.

(3) Nothing in this section gives a right to cause the death of a person who is not accused of an offence punishable with death or with imprisonment for life.

(4) Save in exceptional circumstances, no woman shall be arrested after sunset and before sunrise, and where such exceptional circumstances exist, the woman police officer shall, by making a written report, obtain the prior permission of the Judicial Magistrate of the first class within 3 MCRC-24733-2021 WHOSE local jurisdiction the offence is committed or the arrest is to be made."

11. From the aforesaid textual and contextual reading of various provisions in 2015 Act and Rules framed thereunder, this court is compelled to hold that concept of "Arrest" is foreign to the Scheme of 2015 Act and 2016 Rules and therefore this court proceeds to answer the re-framed question reproduced in preceding para in following terms:- Question. Whether the legislation while promulgating Juvenile Justice (Care and Protection of Children) Act, 2015 in particular Sec. 12 consciously omitted to make available benefit of anticipatory bail to a juvenile ?.

Answer. The Legislature while promulgating 2015 Act and the Rules framed therein has consciously not provided the benefit of anticipatory bail to a juvenile since juvenile is not subjected to "Arrest" as contemplated in Cr.P.C. Thus when there is no arrest followed by custody in police lockup or jail, then providing the benefit of an anticipatory bail would have been futile."

In view of above, since juvenile will not be sent to police lockup/jail but instead to Observation Home/Fit facility/One-stop Home etc. the remedy of anticipatory bail u/Sec. 438 Cr.P.C. is not available to a juvenile.

As such, this instant petition u/Sec. 438 Cr.P.C. being inconsequential and infructuous qua petitioner is dismissed as not maintainable.

Aman

Aman Digitally signed by Aman Tiwari

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