

Reserved

HIGH COURT OF UTTARAKHAND AT NAINITAL

Anticipatory Bail Application No. 52 of 2022

Rashid Rao Applicant

Vs.

State of Uttarakhand Respondent

Present : Mr. Aditya Singh, Advocate for the applicant.
Mr. Lalit Miglani, A.G.A. for the State.

JUDGMENT

Hon'ble Ravindra Maithani, J.

Applicant Rashid Rao is facing trial in FIR No. 100 of 2020, under Sections 376, 323, 504, 506 IPC, registered at P.S. Patel Nagar, District Dehradun. He has sought anticipatory bail.

2. The anticipatory bail application of the applicant has been rejected by the Fast Track Court/Special Judge, POCSO/Additional Sessions Judge, Dehradun on 09.02.2022. The application has been rejected on the ground that since the applicant is a child in conflict with law ("CIL") and the Juvenile Justice (Care and Protection of Children) Act, 2015 ("the Act") does not make any provision for anticipatory bail, the application cannot be allowed.

3. Learned counsel for the applicant would argue that the applicant has not been heard on merits. Bail includes anticipatory bail. Anticipatory bail can be granted by the Juvenile Justice Board (“the JJ Board”). The provisions of anticipatory bail are in favour of an accused apprehending arrest, which is beneficial to preserve the right to life and liberty and denial of it to a CIL is not the intent of the legislature. Filing of chargesheet also does not bar entertaining an anticipatory bail application. Learned counsel would submit that a CIL should have more protection under the law, if not, equal to an accused, who is not governed by the Act. Therefore, it is argued that, the anticipatory bail application of the applicant should have been considered by the court below and the applicant is entitled for anticipatory bail.

4. On the other hand, learned State Counsel would submit that the Act is a beneficial Act for the interest of CIL. CIL may not be kept in police station or in jail. He is not given in the police custody. Safety of child is ensured by the JJ Board. In addition to it, learned State Counsel would also submit that, in fact, initially chargesheet was submitted against the applicant in the

court of Chief Judicial Magistrate, Dehradun, based on which proceedings of Criminal Case No. 2323 of 2020, State v. Rashid, were instituted and cognizance taken on 17.07.2020. It is argued that subsequently on an application of the applicant on 29.08.2021, he was declared CIL and the record of the case was forwarded to the JJ Board. It is argued that thereafter the applicant is not appearing before the JJ Board. Non-bailable warrants have even been issued against him. Therefore, he may not be granted anticipatory bail on this ground also.

5. The Act has been enacted to make the law more child friendly. Instead of interpreting as to why the Act was made, what were its Reasons and Objects, it would be appropriate to reproduce the statement of Objects and Reasons of the Act. It is as hereunder:-

“STATEMENT OF OBJECTS AND REASONS

Article 15 of the Constitution, *inter alia*, confers upon the State powers to make special provision for children. Articles 39(3) and (f), 45 and 47 further makes the State responsible for ensuring that all needs of children are met and their basic human rights are protected.

2. The United Nations Convention on the Rights of Children, ratified by India on 11th December, 1992, requires the State Parties to undertake all appropriate measures in case of a child alleged as, or accused of, violating any penal law, including (a) treatment of child in a manner consistent with the promotion of the child's sense of dignity and worth (b) reinforcing the child's respect for the human rights and fundamental freedoms of others (c) taking 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.

3. The Juvenile Justice (Care and Protection of Children) Act was enacted in 2000 to provide for the protection of children. The Act was amended twice in 2006 and 2011 to address gaps in its implementation and make the law more child-friendly. During the course of the implementation of the Act, several issues arose such as increasing incidents of abuse of children in institutions, inadequate facilities, quality of care and rehabilitation measures in Homes, high pendency of cases, delays in adoption due to faulty and incomplete processing, lack of clarity regarding roles, responsibilities and accountability of institutions and, inadequate provisions to counter offences against children such as corporal punishment, sale of children for adoption purposes, etc. have highlighted the need to review the existing law.

4. Further, increasing cases of crimes committed by children in the age group of 16-18 years in recent years makes it evident that the current provisions and system under the Juvenile Justice (Care and Protection of Children) Act, 2000 are ill equipped to tackle child offenders in this age group. The data collected by the National Crime Records Bureau establishes that crimes by children in the age group of 16-18 years have increased especially in certain categories of heinous offences.

5. Numerous changes are required in the existing Juvenile Justice (Care and Protection of Children) Act, 2000 to address the abovementioned issues and therefore, it is proposed to repeal existing Juvenile Justice (Care and Protection of Children) Act, 2000 and re-enact a comprehensive legislation *inter alia* to provide for general principles of care and protection of children, procedures in case of children in need of care and protection and children in conflict with law, rehabilitation and social re-integration measures for such children, adoption of orphan, abandoned and surrendered children, and offence committed against children. This legislation would thus ensure proper care, protection, development, treatment and social re-integration of children in difficult circumstance by adopting a child-friendly approach keeping in view the best interest of the child in mind.

6. The notes on clauses explain in detail the various provisions contained in the Bill.

7. The Bill seeks to achieve the above objectives.”

6. Sub-section (4) of Section 1 of the Act gives overriding effect to the provisions of the Act. It is as hereunder:

“1. Short title, extent, commencement and application. (1)....

(2)....

(3)....

(4) Notwithstanding anything contained in any other law for the time being in force, the provisions of this Act shall apply to all matters concerning children in need of care and protection and children in conflict with law, including –

- (i) apprehension, detention, prosecution, penalty or imprisonment, rehabilitation and social re-integration in conflict with law;
- (ii) procedures and decisions or orders relating to rehabilitation, adoption, re-integration, and restoration of children in need of care and protection.”

7. A bare perusal of sub-section (4) of Section 1 of the Act makes it abundantly clear that particularly in the matter of apprehension, detention, the provisions of the Act would have overriding effect.

8. Apprehension of a CIL is made under Section 10 of the Act. It is done by Special Juvenile Police Unit or by the designated Child Welfare Police Officer. A CIL

apprehended is produced before the JJ Board without loss of time. Section 12 of the Act makes provision with regard to bail.

9. At this stage only, it may be noted that generally bail is a rule and jail is an exception. The Code of Criminal Procedure, 1973 ("the Code") categorizes the cases under two categories, namely, bailable and non-bailable offences. In the matter of bailable offences, bail is claimed as a matter of right under the Code, but provision of bail as incorporated under Section 12 of the Act are quite distinct. It makes the provision that in all cases, be it bailable or non-bailable, CIL shall be granted bail, provided he fulfils certain conditions. It means, if the conditions as given in the proviso of Section 12 (1) of the Act are not met, even in bailable cases, CIL may not be granted bail.

10. The bail is considered by JJ Board. Constitution of Board is given under Section 4 of the Act. It gives qualification of the members of the Board also. The basic intent of the Act, as is evident from the Statement of Objects and Reasons is to ensure welfare of a child. Provision of Section 438 of the Code may not be

read in the Act without there being any such specific provision.

11. Therefore, this Court is of a view that definitely anticipatory bail may not be granted under the Act and the court below rightly dismissed the anticipatory bail application of the applicant.

12. There is another aspect of the matter. The applicant appeared in the case instituted on the basis of chargesheet submitted against him. He moved an application that he should be declared CIL and on 20.09.2021, he was so declared. Thereafter, when the record was sent to JJ Board, the applicant did not appear before the JJ Board. The processes have been issued against the applicant, but he is not responding to such processes. In fact, it is submitted on behalf of the learned State Counsel, that non-bailable warrants have been issued against the applicant. The applicant is avoiding his presence before the JJ Board. On this ground also, this Court is of a view that the applicant is not entitled for anticipatory bail.

13. In view of the above, this Court does not find any reason to grant anticipatory bail to the applicant. The anticipatory bail application deserves to be dismissed.

14. The anticipatory bail application is dismissed.

(Ravindra Maithani, J.)
24.05.2022

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