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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRR-264-2022

Date of decision:01.08.2022

CHILD IN CONFLICT WITH LAW 'S'

...Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. J.K. Singla, Advocate
for the petitioner.

Mr. Bhupender Beniwal, AAG, Punjab

SURESHWAR THAKUR, J. (ORAL)

1. The present juvenile in conflict with law is alleged in FIR No.86 of 31.12.2021, registered at Police Station Sadar Budhlada, District Mansa to commit offences punishable under Sections 379-B, 427, 511 of the IPC.

2. Though, the juvenile in conflict with law was amenable for his delinquent conduct being inquired into by the Juvenile Justice Board concerned, (hereinafter referred to as "the Board"), but prior to his making his appearance before the Board concerned, especially given the embodyings in the petition FIR, rather cognizable, and, non-bailable offences, thereupon he proceeded to claim the relief of pre-arrest bail, through his moving an apposite application, before the learned Additional Sessions Judge, Mansa.

3. The learned Additional Sessions Judge concerned, made a dis-affirmative order thereon(s). The reason thereof, became grounded in the factum that, the mandate of Section 438 of Cr.P.C., is available to become re-coursed only by an accused apprehending his arrest by the police in respect of non-bailable, and, cognizable offences, and, when Section 12 of the Juvenile Justice

(Care and Protection of Children) Act (hereinafter referred to be as “the Act”), provisions whereof stands extracted hereinafter, especially sub-Section 1 thereof carries therein, the statutory phrase “is apprehended or detained by the police or appears or brought before a Board”, thereupon he concluded, that the signification thereof, is that (i) unless there is apprehension of the juvenile in conflict with law, rather by the police, and, thereafter he makes his appearance, before the Board, through his production being caused therebefore by the police, (ii) rather thereupto neither an application under Section 438 of Cr.P.C., is maintainable nor he becomes empowered to make any affirmative order thereon.

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

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

pendency of the inquiry regarding the person, as may be specified in the order.

(4) When a child in conflict with law is unable to fulfil the conditions of bail order within seven days of the bail order, such child shall be produced before the Board for modification of the conditions of bail.”

4. Though, the learned Additional Sessions Judge concerned, has for reasons hereinafter, made an inapt conclusion that, the petition preferred before him, by the juvenile in conflict with law was not maintainable, but for reasons to be assigned hereinafter, yet the petitioner can *suo motu* make his appearance before the Board concerned, and, irrespective of his committing non-bailable, and, cognizable offences, whereupon the Board concerned, becomes invested with the jurisdiction to, not only then, make an order for his becoming released on bail, rather with or without surety, and/or, to make an order for the juvenile in conflict with law being placed under supervision of a Probation Officer or under the care of any fit person. The above made reason becomes grounded in the trite factum that, a wholesome reading of the all above statutory coinages, as, carried therein, do in the alternate, to the causings of his coercive production, before the Board, rather evidently leverage in him the statutory right, to make his *suo motu* appearance before the Board, and, such *suo motu* appearance, is permissible, for the relevant purpose (*supra*), even when he is alleged to commit non-bailable, and, cognizable offences.

5. The above inference becomes firmly rooted, in the firm factum, that though through, apposite statutory empowerments, the police can apprehend or detain the juvenile in conflict with law, and, thereafter may produce him, before the Board concerned, but yet when the statutory phrase therein “apprehension by the police”, when becomes yet succeeded by the words “or appears or brought before a Board”. In sequel, the import of coinage(s) “appears or brought before a Board”, as occur subsequent to the statutory phrase “apprehension or detention

by the police”, is that, the juvenile in conflict with law, has been preserved an alternative mode, to his being apprehended or detained, by the police, and, thereafter his being produced before the Board, inasmuch as, his being bestowed the statutory latitude of even his *suo motu* causing his appearance, before the Board concerned. The above *suo motu* appearance is an unqualified appearance, and, is not limited to his appearance, qua only bailable offences, but also extends qua non-bailable offences, and, cognizable offences, as sub-Section 1 of Section 12 of the Act (supra), does not make any restrictions qua his *suo motu* appearance before any Board, rather appertaining to only qua bailable offences. Therefore, such appearances extend to, even when he has allegedly committed non-bailable, and, cognizable offences, and, also bestow in him the statutory privileges, as become cast therein.

6. Though, the juvenile in conflict with law could, upon his becoming apprehended or arrested by the police, have accessed the Criminal Court of competent jurisdiction, as become constituted under the Cr.P.C., but yet the learned Additional Sessions Judge concerned, rather ordered that the apposite application, as, cast under Section 438 of Cr.P.C., was not maintainable. However, the above made order is completely infirm, as the learned Additional Sessions Judge concerned, has over focused, and, has, made an over emphasis, upon, the coinage “his apprehended or detained, by the police” as occurs in sub-Section 1 of Section 12 of the Act, and, has concluded that, there is a complete dire statutory necessity of the juvenile in conflict with law, rather prior to his availing the mandate of Section 12, rather his becoming necessarily apprehended or detained by the police, and, obviously only after his apprehension, rather his becoming well leveraged to avail the statutory remedy for pre-arrest bail, though his accessing the Board or the Court concerned.

7. The above made construction to Section 12, is completely misplaced, and, arises from a completest mis-understanding, not only, about the holistic, and, salutary purpose, behind the special enactment, but has also arisen from the factum, of the completest non-appreciation, and, consequent non-application, of the statutory import qua the leverage bestowed in law, to the juvenile in conflict with law, nor has borne in mind the above signification, as, assigned to the relevant alternate statutory mode, to the police becoming empowered to apprehend or detain the juvenile in conflict with law, and, thereafter producing him before the Board concerned, inasmuch as, the juvenile in conflict with law, becoming empowered to exercise the statutory latitude, rather through his *suo motu* making his appearance before the Board concerned, and, such appearance(s) being limited to not only bailable offences, but also extending to non-bailable offences, and, cognizable offences.

8. The learned Additional Sessions Judge concerned, rather *in tandem* with the relevant statutory embargo cast, in the SC & ST Act, hence against, the maintainability of a pre-arrest bail petition in respect of offences therein, has obviously untenably cast the above embargo, even upon the petitioner. The above modes of casting of a statutory embargo, upon the petitioner rather against his, instituting an application for pre-arrest bail, does not only visibly detract, from the above made signification, to the statutory phrases (*supra*), but also defeats the salutary purpose of a child beneficial special Enactment. Therefore, since the petition offences are non-bailable, and, are cognizable, and, unless at his instance, to the investigating officer concerned, certain recoveries, are extremely important, yet they can be ensured to be made, to the investigating officer concerned, but in the presence of the Special Investigator concerned, rather for ensuring that, the salutary purpose carried, in the proviso underneath

sub-Section 1 of Section 12 of the Act, is rendered not redundant, especially when without the Special Investigator, he faces the investigating officer concerned, there may be every likelihood of his mindset, being etched with a deep trauma, for obviations whereof, the proviso is meant.

9. Be that as it may, if the juvenile in conflict with law *suo motu* makes his appearance before the Board concerned, and, his appearance, is also, in respect of the petition offences, which may be non-bailable in nature, thereupon the said appearance of the juvenile in conflict with law, before the Board, would be deemed to be his making his constructive custody, before the Board concerned, and, if the above *suo motu* appearance of the juvenile in conflict, with law, is deemed to be his constructive custody, with the Board concerned. Therefore as enshrined in sub-Section 1 of Section 12 of the Act, the juvenile in conflict with law, becomes empowered to claim his being released, on bail with or without surety, and,/or, claim qua his being placed, under the supervision of a Probation Officer or under the care of any fit person. The inference (*supra*), also applies with alike force, qua the learned Additional Sessions Judge concerned, especially when he without being coercively detained, rather his appearance before him, is deemed to his constructive custody before him, and, as such, his petition was maintainable.

10. Even though, as above stated, the police has lawful authorization(s) to apprehend or detain a juvenile in conflict with law, but the statutory coinage, as occur subsequent thereto inasmuch as, “or appears” when read combinedly with the preceding thereto empowerment, as, vested in the police, rather does galvanize a conclusion, that the alternative thereto *suo motu* leverage, conferred, upon the juvenile in conflict with law, is not ideally made nor is thoughtlessly made, but is made with a deep legislative intent, as well as, is, beneficial to the juvenile in conflict with law, whereupon the legislature intent is to be revered.

The legislative intent, is that, only in respect of the most heinous offences committed by the juvenile in conflict with law, and, with evident complicity with an adult accused, who are to be tried before the jurisdictionally empowered Court, as constituted under the Cr.P.C., then may be, the police may lawfully exercise the statutory discretion, of theirs apprehending or detaining a juvenile in conflict with law, but if the offences committed by the juvenile in conflict with law, are not heinous or grave, inasmuch as, theirs, not entailing punishment of life imprisonment, but entailing only punishment of a lesser term, thereupon even if such offences, are non-bailable, then may be the police may not arrest, nor, apprehend juvenile in conflict with law, and, in that event the juvenile in conflict with law, can well choose the statutorily assigned mode, qua his *suo motu* making his appearance before the Board, and, to thereafter claim, for his being ordered to be released on bail. Moreover even when he seeks relief of pre-arrest bail from the jurisdictionally empowered Court, thereupon as, above stated, his appearance before the Court, is to be construed to be his making his surrender therebefore, or is to be deemed to be his being in the constructive custody of the Board concerned, and, of the Court concerned. In consequence the relevant motions, before the Board, and/or, the Court, do leverage in him the right to claim the apposite statutory privilege.

11. Bearing in mind that non-bailable offences, become committed, by the juvenile in conflict with law, but since they do not entail the imposition, upon him of punishment of life imprisonment, and, also when even upon, the concerned, being tried along with an adult accused concerned, yet when then also, the mandate of Section 18 of the Act, provisions whereof stands extracted hereinafter, do not permit, the judicial incarceration of the juvenile in conflict with law, but rather contemplate(s), that the juvenile in conflict with law, rather

being sent to a Children's Home, Therefore, the holistic purpose of the Act, is to save the juvenile in conflict with law, from the agony, and, trauma of judicial incarceration. In consequence, on the above analogy, any pre-trial detention of the petitioner, especially in police custody, is to be saved, as, and, when deemed fit, as the above ill event would entail moral, physical or psychological danger to the framework, of the juvenile in conflict with law, and, would militate against the spirit of the salutary provision(s), as become encapsulated in the special enactment.

“18. Orders regarding child found to be in conflict with law.-- (1)

Where a Board is satisfied on inquiry that a child irrespective of age has committed a petty offence, or a serious offence, or a child below the age of sixteen years has committed a heinous offence, then, notwithstanding anything contrary contained in any other law for the time being in force, and based on the nature of offence, specific need for supervision or intervention, circumstances as brought out in the social investigation report and past conduct of the child, the Board may, if it so thinks fit,—

(a) allow the child to go home after advice or admonition by following appropriate inquiry and counselling to such child and to his parents or the guardian;

(b) direct the child to participate in group counselling and similar activities;

(c) order the child to perform community service under the supervision of an organisation or institution, or a specified person, persons or group of persons identified by the Board;

(d) order the child or parents or the guardian of the child to pay fine:

Provided that, in case the child is working, it may be ensured that the provisions of any labour law for the time being in force are not violated;

(e) direct the child to be released on probation of good conduct and placed under the care of any parent, guardian or fit person, on such parent, guardian or fit person executing a bond, with

or without surety, as the Board may require, for the good behaviour and child's well-being for any period not exceeding three years;

(f) direct the child to be released on probation of good conduct and placed under the care and supervision of any fit facility for ensuring the good behaviour and child's well-being for any period not exceeding three years;

(g) direct the child to be sent to a special home, for such period, not exceeding three years, as it thinks fit, for providing reformatory services including education, skill development, counselling, behaviour modification therapy, and psychiatric support during the period of stay in the special home:

Provided that if the conduct and behaviour of the child has been such that, it would not be in the child's interest, or in the interest of other children housed in a special home, the Board may send such child to the place of safety.

(2) If an order is passed under clauses (a) to (g) of sub-section (1), the Board may, in addition pass orders to—

(i) attend school; or

(ii) attend a vocational training centre; or

(iii) attend a therapeutic centre; or

(iv) prohibit the child from visiting, frequenting or appearing at a specified place; or

(v) undergo a de-addiction programme.

(3) Where the Board after preliminary assessment under section 15 pass an order that there is a need for trial of the said child as an adult, then the Board may order transfer of the trial of the case to the Children's Court having jurisdiction to try such offences."

12. In the wake of the above, and, irrespective of this Court, quashing the impugned order, thereupon, this Court reserves liberty to the juvenile in conflict with law, to *suo motu* cause his appearance, before the Board concerned, and, such appearance shall be deemed to be his surrender, before the Board concerned, and, also his constructive custody, or his deemed custody, before the Board concerned, which shall if satisfied, that the report of the Social

Investigator, does not cause breach the proviso to sub-Section 1 of Section 12 of the Act, shall in accordance with law, grant him bail with or without surety, or shall proceed to make such lawful orders, as deemed fit.

13. In consequence, with the above liberty to the juvenile in conflict with law, to make his *suo motu* appearance before the Board, whereupon, the Board concerned, shall forthwith invite the social investigation report, with respect to the juvenile in conflict with law, and, appertaining qua if admitted to bail, he would not be exposed to moral, physical or psychological danger, and, if a report dis-affirmative, to the juvenile, in conflict with law, yet is made, by the Social Investigator concerned, thereupon, the Board concerned, may make an order, in accordance with law, qua the juvenile in conflict with law, being put under the supervision of a Probation Officer or under the care of any fit person.

14. Petition is disposed of with above observations.

(SURESHWAR THAKUR)
JUDGE

01.08.2022

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Whether speaking/reasoned:-	Yes/No
Whether reportable:	Yes/No