

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.43991 of 2024

Arising Out of PS. Case No.-118 Year-2021 Thana- BARHARA District- Bhojpur

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Rohit Kumar Yadav s/o Rameshwar Yadav R/o Village-Bela, P.S.-
Barhara(Krishangarh), District-Bhojpur, Bihar

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Ravindra Kumar, Advocate
For the State	:	Mr. Nadim Seraj, GP5
		Mr. Ali M. Ahmed, AC to GP5
		Mr. Nand Kishore Prasad, APP
		Mr. Shahbaj Alam, AC to GP5
For the Amicus Curiae	:	Mr. Abhay Shankar Singh, Advocate

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CORAM: HONOURABLE JUSTICE SMT. SONI SHRIVASTAVA
CAV JUDGMENT

Date : 12-09-2025

Heard Mr. Ravindra Kumar, learned counsel for the petitioner, Mr. Nadim Seraj, learned GP-5 appearing on behalf of State, especially appointed by the learned Advocate General, assisted by Mr. Ali M. Ahmed and Mr. Shahbaj Alam, learned AC to GP-5, Mr. Nand Kishore Prasad, learned APP for the State and Mr. Abhay Shankar Singh, learned Advocate appointed as Amicus Curiae in this case.

2. By way of filing the present application, the very basic right i.e. fundamental right of protection of life and personal liberty as enshrined under Article 21 of the Constitution of India has been invoked to assert the legal right of a child in



conflict with law. The present case deals with seeking anticipatory bail under Section 438 of the Cr.P.C by a child in conflict with law (here-in-after referred to as “CICL”), which does not expressly feature upon a plain reading of the Juvenile Justice (Care and Protection of Children) Act, 2015 (here-in-after referred to as “J.J. Act”). Article 21 of the Constitution of India, no doubt is a corner stone of all fundamental rights, which in unequivocal terms guarantees that no person shall be deprived of their life or personal liberty, except according to the procedure established by law, meaning thereby that all persons are entitled to a dignified life, a healthy environment and a personal freedom of making their own choices and pursuing their own interests, within the legal framework.

3. This Court would later embark upon the facts and merits of the case and as of now, would advert to the maintainability of the present anticipatory bail application filed on behalf of a juvenile/CICL, as a preliminary objection has been raised by the learned APP appearing on behalf of State on the ground that there is no provision regarding applicability of Section 438 of the Cr.P.C. under the J.J. Act, 2015 and the said Act is a complete Code in itself.

4. In order to reach a reasonable and logical



conclusion, this Court has sought the assistance of Mr. Abhay Shankar Singh, learned *Amicus Curiae* and has also requested the Office of the learned Advocate General for providing due assistance to this Court as an important question of law is involved and hence, Mr. Nadim Seraj, learned Government Advocate appears for the necessary assistance.

5. It has been argued by learned counsel appearing for the petitioner that the present application on behalf of a juvenile is maintainable in the eyes of law and he has initiated his argument by making a reference to some relevant extracts of the Preamble to the **Convention on the Rights of the Child**, adopted by the General Assembly of the United Nations on 20.11.1989 which are quoted here-in-below:-

“Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance,

Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities with the community,

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,



Considering that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity,

Bearing in mind that, as indicated in the Declaration of the Rights of the Child, "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth"

6. Reference has also been made to different provisions of the Constitution of India with special emphasis on Article 21, which contemplates that no person shall be deprived of his life or personal liberty except according to procedure established by law and the right of anticipatory bail flowing from the said provision of the Constitution of India, casts an obligation to be upheld as it concerns the fundamental right of personal liberty and the personal liberty means freedom from physical restraints of a person by incarceration or otherwise, available to all humans irrespective of age and gender. In addition to the same, he has also quoted few other provisions from the said convention which are quoted here-in-under:-

"Article 3 (1). In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative



bodies, the best interests of the child shall be a primary consideration.

Article 37 (b). No child shall be deprived of his or her liberty unlawfully arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

Article 40(2) (b) (i) to be presumed innocent until proven guilty according to law;”

7. There is a further reference made to Section 3 of the Juvenile Justice Act, 2015 which enunciates the general principles to be followed in the administration of the Act, while the learned counsel makes his submission with regard to the fact that the said Act is a beneficial piece of legislation to be interpreted in the best interest of child. He strongly contends that the Juvenile Justice Act neither provides nor expressly debars a child from availing the benefit of pre-arrest bail. It only deals with procedural mechanism of bail after the child is apprehended and produced before the Court. While Sections 10 and 12 of the J.J. Act concern bail which is issued upon arrest/detention resulting in release from police/judicial custody, anticipatory bail is provided to a person in apprehension or anticipation of arrest.

8. It is also submitted by learned counsel for the petitioner that the theory that there is no “arrest” under the J.J.



Act is a misnomer as the official Hindi version of the Act translates “apprehended/detained” as “गिरफ्तार/निरुद्ध”. It is thus contended that the Juvenile Justice Act being a special and beneficial legislation does not oust the benefit of anticipatory bail to a CICL granted under Section 438 of the Cr.P.C., which is available to “any person” and moreover a CICL cannot be said to have no remedy towards his personal liberty at the time of enquiry before the Juvenile Justice Board.

9. To buttress his submissions, he has referred to a few judgments of different High Court being *Birbal Munda Vs. State of Jharkhand* reported in *2019 SCC Online Jhar1794*, *Raman Vs. State of Maharashtra* passed in *Anticipatory Bail Application No.277 of 2022*, *Kureshi Irfan Hasambhai Vs. State of Gujarat* passed in *Cr. Misc. Application No. 6978 of 2021*, *Munwa Devi and Ors. Vs. The State of Jharkhand and Anr.* in *A.B. Case No.3603 of 2016*, *Surbhi Jain (Minor) Vs. State of West Bengal* passed in *C.R.M. No. 405 of 2021* and *Md. Zaid Vs. State of U.P.* reported in *2023 (248) AIC 923* wherein and whereby the provision of anticipatory bail under Section 438 of the Cr.P.C has been held to be available to a child.

10. The learned Amicus appointed in this Court has opened his argument by referring to a *shloka* of Manusmriti



अदण्ड्यान् दण्डयन् राजा दण्ड्यांश्चैवाप्यदण्डयन् ।

अयशो महदाप्नोति नरकं चैव गच्छति ॥१२८॥

11. The english translation of the said *shloka* would be the King, punishing those who do not deserve to be punished, and not punishing those who deserve to be punished, attains great ill-fame and goes to hell.-(128). He has related the deprivation of anticipatory bail to a juvenile to that of punishing him which he does not deserve. He has laid emphasis on the very object of the Act No.2 of 2016, dated 31.12.2015, which is to adopt a child friendly approach in the adjudication and disposal of matters in the best interest of children and for their rehabilitation, in conformity with the various international conventions about the rights of child, as referred in the object and preface of the J.J. Act, 2015 itself. The thrust of his argument lies upon personal liberty as guaranteed under Article 21 of the Constitution of India and the applicability of Section 438 of the Cr.P.C. upon a CICL, which stands in consonance with the mandates of Article 21. In this context, he has referred to the definition clause under the J.J. Act defining “the best interest of child”, “child friendly” etc. A special reference has also been made to Section 3 of Chapter 2 of the said Act which deals with general principles of care and protection of children,



a combined reading of which mandates that fundamental principles to be followed while implementing the provisions of the said act gives much importance to the best interest of the child, principle of safety, principles of institutionalization as a measure of last resort and principle of repatriation and restoration even by adopting principle of diversion in the best interest of the child or the society as a whole. He has thus submitted that any deprivation of liberty of a person, being a child, on the date of occurrence would be in the teeth of fundamental right of right and liberty. Thus, in absence of an express provision granting or debarring anticipatory bail to a CICL, requires an interpretation of the provisions of the Act in the best interest of child so as to ensure the principles of repatriation and restoration, protecting the right of such child to be reunited with his family at the earliest, taking the principles of institutionalization as a measure of last resort.

12. It has further been argued that such an interpretation should ordinarily lean towards a juvenile, as even though a CICL, as per the provisions of the Act is not to be lodged in a police lock-up or jail, but the very detention within the confines of a remand home/observation home/correction home etc. acts as a curtailment of the personal liberty which has



been explained in Chamber's Dictionary, 20th Century addition, as freedom from constraint, captivity, slavery or tyranny which means freedom to do as one pleases with the unrestrained enjoyment of natural rights, which denotes power of free choice. Therefore, the right of anticipatory bail, having its origin in Article 21 of Constitution of India ensuring and guaranteeing the fundamental rights of personal liberty, save and except curtailment as per the procedure established by law, must be extended to the CICL in order to ensure harmonious construction of the provisions of J.J. Act, 2015 in consonance of the provision of Cr.P.C., as per the spirit of the Constitution of India.

13. Both the learned counsel for the petitioner and the learned *Amicus* have emphatically argued upon adherence to Article 21 of the Constitution of India, in its letter and spirit, in the background of the fact that there is no express bar in the Act for exercising discretion of granting anticipatory bail in favour of the child. A reference has been made to some other laws like Section 18 of SC/ST (POA), Act, 76(2) of the Bihar Prohibition and Exicse Amendment Act etc, where despite an express bar to anticipatory bail, the maintainability of anticipatory bail applications are not completely barred and are rather entertained



in all appropriate cases.

14. The learned Amicus Curiae, in order to fortify his arguments, relied upon the judgment of a Division Bench of Bombay High Court in case of *Raman Vs. State of Maharashtra* reported in *2022 SCC OnLine Bom 1470* which upheld the maintainability of anticipatory bail with respect to CICL. He next relied upon a Division Bench judgment of Calcutta High Court passed in the case of *Ms. Surbhi Jain (Minor) Vs. State of West Bengal* in *C.R.M 405 of 2021* decided on 23.08.2021 which also laid down that the welfare and protection of a CICL is the paramount consideration and as such a beneficial legislation is to be interpreted so as to protect his rights and thus, the benefit of Section 438 Cr.P.C. cannot be kept out of the purview. A reference has also been made to **Article 14 of Constitution of India** propounding equality before law and in this view of the matter also the benefit has to be extended to a CICL which is available to other citizens. He has placed a strong and pressing reliance on the judgment of *Md. Zaid Vs. State of U.P.* rendered by the Division Bench of Allahabad High Court presided by the Chief Justice of Allahabad High Court on 29.05.2023, which came upon a reference and had concluded that the CICL would also be



entitled to exercise his right under Section 438 Cr.P.C.

15. Mr. Nadim Seraj, learned G.P.5 appearing on behalf of the State, has submitted that the J.J. Act, 2015 is a comprehensive, welfare-oriented, and reformatory legislation enacted to safeguard the rights, dignity, and well-being of CICL and those in need of care and protection. Recognizing that a child's mind is tender, evolving, and impressionable, the Act is firmly rooted in the principles of restorative justice, non-institutional care, and the best interest of the child. It provides a wholesome legal framework, containing both substantive and procedural provisions, aimed at rehabilitation, reintegration, and social mainstreaming of children rather than retribution. The Act ensures child-friendly procedures, mandates specialized institutions like Juvenile Justice Boards and Child Welfare Committees, and promotes individualized care through institutional and non-institutional mechanisms.

16. He has next referred to the object of the enactment of the J.J. Act which also emphasizes upon adopting a child friendly approach in the adjudication and disposal of matters in the best interest of children. He has taken this Court to the various provisions of the Act with special emphasis on Sections 2, 3, 8, 10, 11 and 12 of the Act. Section 8(3)(b) of J.J.



Act, while dealing with the functions and responsibilities of the Board is said to include ensuring that the child's rights are protected throughout the process of apprehending the child, inquiry, aftercare and rehabilitation. A reference has been made to Section 10 of the J.J. Act dealing with apprehension of child alleged to be in conflict with law, the provisions of which clearly indicates that in no case, a child alleged to be in conflict with law shall be placed in a police lock-up or lodged in a jail. Learned counsel further makes a special reference to Section 12 of the Act which contains the provisions of bail to a CICL, when he is apprehended or detained by the police or appears or is brought before the board, notwithstanding anything contained in the Cr.P.C. or any other law for the time being in force. An emphasis on the principal of institutionalization as a measure of last resort after making a reasonable enquiry has been made by way of Section 3(xii) of the J.J. Act, 2015.

17. While discussing the scope of Section 438 of the Cr.P.C, which is pre-arrest legal remedy available to a person, learned GP5 appearing on behalf of the State, has placed his arguments in view of non-maintainability of Section 438 of the Cr.P.C. under the scheme of the J.J. Act by stating that the J.J. Act is both procedural and substantive, and thus self-



contained. Section 12 provides a complete mechanism for release of juveniles. It contains a non-obstante clause overriding the Cr.P.C. or any other law. Section 10 speaks of "apprehension", not "arrest". Since anticipatory bail under Section 438 Cr.P.C. presupposes the possibility of arrest, it becomes inapplicable where arrest is legally impermissible. The Act is beneficial and reformatory, prioritizing welfare and rehabilitation over penal consequences. Enabling anticipatory bail would undermine statutory protections and judicial oversight through the Juvenile Justice Board. If anticipatory bail is maintainable U/s 438 of the Cr.P.C, the logical corollary is that the court would also be empowered to reject the application which may render the child susceptible of being arrested which goes against the basic object of the Act.

18. In support of his arguments, he has referred to a judgment of Madras High Court in case of ***K. Vignesh Vs. State representative by the Inspector of Police*** reported in ***2017 SCC OnLine Mad 28442***, whereby the Division Bench has held that the legislature consciously did not empower the police to arrest a child in conflict with law and thus, it is manifestly clear that an application seeking anticipatory bail under Section 438 of the Code at the instance of a child in conflict with law is not at all



maintainable. He has placed reliance on paragraph nos. 11, 15 and 16 of the said judgment. Paragraph no.16 of judgment of **K. Vignesh (supra)** is being quoted here-under:-

“16. Thus, there are lot of safeguards provided to the child in conflict with law in the event the child is apprehended by the police. In the light of these safeguards, and in the light of the legal position that the child in conflict with law cannot be arrested, the child in conflict with law need not apply for anticipatory bail. The legislature has consciously did not empower the police to arrest a child in conflict with law. Thus, it is manifestly clear that an application seeking-anticipatory-bail under Section 438 Cr.P.C. at the instance of a child in conflict with law is not at all maintainable. Similarly, a direction to the Juvenile Justice Board to release the child in conflict with law cannot be issued by the High Court in exercise of its inherent power saved under Section 482 Cr.P.C. Thus, we approve the view of the Hon'ble Mr. Justice P.N. Prakash in Ajith Kumar v. State, reported in 2016 (2) CTC 63 and we are impelled to overrule all the other orders wherein conflicting views have been expressed. Accordingly, we answer the reference.”

19. The Punjab and Haryana High Court in case of **Piyush Minor through his mother Vs. State of Haryana** passed in **CRM-M-21406 of 2021** vide order dated 05.07.2021 has held



that the language of Section 12 of the J.J. Act would show the intention of the legislature in safeguarding the welfare of juvenile wherein it mandates the production of the child before the Board. The underlying purpose of the scheme appears to be that legislature wanted the personal interaction of the juvenile with the Board before arriving at a decision regarding his bail. On the other hand, such a provision does not have any place under Section 438 Cr.P.C and hence safeguard provided to a juvenile is automatically bypassed. Even otherwise, the Act mandates the provision of granting the bail to a juvenile in a bailable or non-bailable offence notwithstanding anything contained in Cr.P.C.

20. The Madhya Pradesh High Court in case of ***Reference Vs. Memo No. 454 of 2024*** passed in Misc. Cr. Case No. 1133 of 2025 vide order dated 19.05.2025 has held that the Act will have overriding effect upon any other law for the time being in force and the provisions of this Act shall apply to the matters concerning children in need of care and protection as well as children in conflict with law. The scope of the same has also been stated in Section 1(4) of the Act to include apprehension, detention, prosecution, penalty or imprisonment, rehabilitation and social re-integration of



children in conflict with law and also procedures and decisions or orders relating to rehabilitation, adoption, re-integration and restoration of children in need of care and protection.

21. The learned counsel has further placed a strong reliance on the case of *Ankesh Gurjar Vs. State of M.P.*, decided by a Division Bench of High Court of Madhya Pradesh (Gwalior Bench) in *Cr. Rev. No. 2112 of 2020 and Misc. Cr. Case No. 41359 of 2020* delivered on 20.01.2021, wherein a specific question was framed by the Court as to whether the legislature while promulgating J.J. Act, 2015, in particular Section 12, consciously omitted to make available benefit of anticipatory bail to a juvenile or not?

22. This Court has heard in length, the arguments advanced by the learned counsel for petitioner, the learned Amicus Curiae, learned APP for the State and the learned GP5 also appearing on behalf of the State. The moot question which falls for the consideration of this Court is whether CICL would be entitled to anticipatory bail under Section 438 Cr.P.C./482 of B.N.S.? Before going any further with the discussion, let us first advert to the provision of anticipatory bail as provided under Section 438 Cr.P.C./482 B.N.S.S which is quoted here-in-



below:-

*“438. Direction for grant of bail to person apprehending arrest-[(1) Where **any person** has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section that in the event of such arrest he shall be released on bail; and that Court may, after taking into consideration, inter alia, the following factors, namely:-*

(i) the nature and gravity of the accusation;

(ii) the antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;

(iii) the possibility of the applicant to flee from justice; and

(iv) where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested, either reject the application forthwith or issue an interim order for the grant of anticipatory bail.”

23. The parent law which is the guiding force of all legislation is undoubtedly the Constitution of India and the provision of anticipatory bail granted under Section 438 of the Cr.P.C. flows from a right which has been given to a citizen under Article 21 of the Constitution of India, which is quoted hereunder:-

*“21. **Protection of life and personal liberty.- No person shall be***



*deprived of his life or personal liberty
except according to procedure
established by law.”*

24. The significance attached to personal liberty of a citizen is apparent from a bare reading of both the aforementioned provisions of Cr.P.C./B.N.S.S. and the Constitution of India. The words “Any Person” in Section 438 Cr.P.C. and “No Person” in article 21 of the Constitution of India, both give the message loud and clear that the remedy of anticipatory bail can be invoked by any person having an apprehension of arrest (unless barred by any special law) and any view taken, which does not draw a connection between Section 438 of Cr.P.C. and Article 21 of the Constitution of India would indeed be an erroneous view as personal liberty is the basic touchstone of both the provisions. However, the parameters for such privilege may be different and no person can be deprived of his personal liberty as per Article 21 of Constitution of India except according to the procedure established by law. Personal liberty explained according to Dicey in his treatise as “the right to personal liberty as understood in England means in substance a person’s right not to be subjected to imprisonment, arrest, or other physical coercion in any manner that does not admit of legal



justification.”

25. This observation of Dicey with regard to “personal liberty” was taken note of in the case of ***Sidharam Satlingappa Mhetra Vs. State of Maharashtra*** reported in (2011) 1 SCC (Cri.) 514.

26. A reference needs to be made to the celebrated judgment of ***Gurbaksh Singh Sibba etc. Vs. The State of Punjab*** reported in ***AIR 1980 SC 1632*** which still holds the field. Paragraph no. 26 of the said judgment is quoted here-in-below:-

“26. We find a great deal of substance in Mr. Tarkunde's submission that since denial of bail amounts to deprivation of personal liberty, the Court should lean against the imposition of unnecessary restrictions on the scope of Section 438, especially when no such restrictions have been imposed by the legislature in the terms of that Section. S. 438 is a procedural provision which is concerned with the personal liberty of the individual, who is entitled to the benefit of the presumption of innocence since he is not, on the date of his application for anticipatory bail, convicted of the offence in respect of which he seeks bail. An over-generous infusion of constraints and conditions which are not to be found in Section 438 can make its provisions constitutionally vulnerable since the right to personal freedom cannot be made to depend on compliance with unreasonable restrictions. The beneficent provision



contained in Section 438 must be saved, not jettisoned. No doubt can linger after the decision in Maneka Gandhi, (1978) 1 SCC 248: (AIR 1978 SC 597) that in order to meet the challenge of Art. 21 of the Constitution, the procedure established by law for depriving a person of his liberty must be fair, just and reasonable. S. 438, in the form in which it is conceived by the legislature, is open to no exception on the ground that it prescribes a procedure which is unjust or unfair. We ought, at all costs, to avoid throwing it open to a Constitutional challenge by reading words in it which are not to be found therein."

27. The word 'person' now assumes significance and there can be no doubt on the fact that a 'person' would include all human beings, both 'adult' and 'child'.

28. Now, the definition of child as given in the J.J. Act also needs to be considered, which quoted here-under:-

"Child" means a person who has not completed eighteen years of age.

29. A conjoint reading of all the above mentioned provisions leaves no room for doubt that a CICL would also be considered as a "person" as envisaged under Section 438 of Cr.P.C. and Article 21 of the Constitution of India and would thus be entitled to invoke all the beneficial provisions including that of anticipatory bail, which concerns the question of personal liberty as contemplated under the Constitution of India by virtue of him being a "person". At this juncture this Court feels



tempted to quote paragraph no. 56 of ***Sushila Aggarwal Vs. State (NCT of Delhi) and Another*** reported in ***(2020) 5 SCC 1*** which conformed to the view taken in the judgment of ***Gurbaksh Singh Sibba (supra)*** which not only emphasized the significance of personal liberty but also highlights its inextricable connection with Section 438 of the Cr.P.C. denoting personal liberty to be the very foundation of the said provision. Here, Paragraph no. 56 of the ***Sushila Aggarwal (supra)*** is being quoted hereunder:-

“The reason for enactment of Section 438 in the code was Parliamentary acceptance of the crucial underpinning of personal liberty in a free and democratic country. Parliament wished to foster respect for personal liberty and accord primacy to a fundamental tenet of criminal jurisprudence, that everyone is presumed to be innocent till he or she is found guilty. Life and liberty are the cherished attributes of every individual. The urge for freedom is nature to each human being. Section 438 is the procedural provision concerned with the personal liberty of each individual, who is entitled to the benefit of presumption of innocence. As denial of bail amounts to deprivation of personal liberty, the Court should lean against the imposition of unnecessary restriction on the scope of Section 438, especially when not imposed by the legislature.”

30. Adverting to the two main arguments advanced



on behalf of the State, which challenge the maintainability of an application for anticipatory bail under Section 438 Cr.P.C. on behalf of CICL are enumerated hereunder as follows:-

(a) Section 438 Cr.P.C. is not maintainable in view of the fact that there is no provision of “arrest” under the J.J. Act and hence, there cannot be any situation of “apprehension of arrest” which is the sine-qua-non of Section 438 of Cr.P.C.

(b) The very application of the provision of Cr.P.C, 1973 stands ousted by the usage of a non-obstante clause in Section 12 of the Act which deals with the provision of bail to a CICL and hence, Section 12, providing an overriding effect and specific mechanism for grant of bail to such children, excludes the applicability of the provisions of Cr.P.C. including Section 438. This assertion is based on the ground that the J.J. Act is a self-contained Act, a complete code in itself and hence, the concept and right of anticipatory bail is incongruous to the scheme of the Act.

31. With regard to first contention raised on behalf of the State, it would be necessary to first clarify the meaning of “**arrest**” in relation to the term “**apprehension**” as used under the J.J. Act, 2015.

32. The Black's Law Dictionary defines **Arrest**,



which generally means "to deprive a person of his liberty by legal authority" or "taking, under real or assumed authority, custody of another for the purpose of holding or detaining them to answer a criminal charge or civil demand". It commonly refers to the act of taking a person into custody, typically by a law enforcement officer, using lawful authority. **Apprehension** primarily refers to the capture, arrest, or seizure of a person in the name of the law, often through the exercise of police authority. It signifies the act of taking someone into custody to answer for a legal demand, and in a criminal context, it involves a person being dealt with by the police for a reported offence.

33. Thus, we see that '**Apprehension**' is somewhat synonymous to '**Arrest**' leaving no room for doubt on the fact that a person's freedom and personal liberty is curtailed once a person is apprehended.

34. At this stage, it would be imperative to reproduce Section 10 of the J.J. Act which is the provision for the apprehension of child alleged to be in conflict with law which is quoted here-in-below:-

***"10. Apprehension of child
alleged to be in conflict with law-
(1) As soon as a child alleged to be
in conflict with law is apprehended
by the police, such child shall be
placed under the charge of the***



special juvenile police unit or the designated child welfare police officer, who shall produce the child before the Board without any loss of time but within a period of twenty-four hours of apprehending the child excluding the time necessary for the journey, from the place where such child was apprehended:

Provided that in no case, a child alleged to be in conflict with law shall be placed in a police lockup or lodged in a jail.

(2) The State Government shall make rules consistent with this Act,—

(i) to provide for persons through whom (including registered voluntary or non-governmental organisations) any child alleged to be in conflict with law may be produced before the Board;

(ii) to provide for the manner in which the child alleged to be in conflict with law may be sent to an observation home or place of safety, as the case may be.”

35. From a bare perusal of the above-mentioned provision, it would be clear that upon his apprehension by the police, a CICL shall be placed under the charge of the special juvenile police unit or the designated Child Welfare Police Officer, who shall produce the child before the Court and hence, the usage of the word ‘shall’ in the said provision lays down the mandatory nature of the scheme of



the Act of a CICL to be taken charge of, by the Special Juvenile Police Unit or the other designated Officer. It is true that the CICL is not to be placed in a police lock-up or lodged in a jail, but his being under charge of Special Juvenile Police Unit and being confined to an observation home or place of safety as envisaged under Clause (2) of the above-mentioned provisions, unquestionably, curtails the liberty of the CICL.

36. One has to be conscious of the fact that there can be several instances of false implications of a child who is thoroughly innocent and the trauma of such a child being apprehended to be brought before the Board and of being sent to observation home or place of safety, has to be visualized with a deeper sense of sensitivity. We cannot possibly shut our eyes to such false implications, rather it is our bounden duty to protect children from the undue harassment and humiliations which are involved. Moreso, when law provides for protection of adults from arbitrary arrests by way of provision for anticipatory bail, it does not stand to reason as to why a child would not be extended the same benefit when there is no such distinction carved out in



the statute itself.

37. It thus appears that denial of anticipatory bail to such a child would indeed not be in the “best interest of child”, which is the main thrust of the Juvenile Justice Act. False implications on account of varied reasons/oblique motives, is not an alien concept and such children also need to be protected from the rigours of the procedure of being apprehended and being brought before the Board or being sent to observation home or other places of safety. This would take this Court to the arguments advanced by the learned counsel for the petitioner as well as the learned Amicus Curaie that the “best interest of child” is the primary and fundamental concern of the Juvenile Justice Act and such child cannot be left remediless at any stage of a proceeding against him which includes the time of his apprehension/detention at the stage of being brought/produced before the Board for the purposes of inquiry and assessment of age. The “**best interest of child**” has been defined under **Section 2(9) of the J.J. Act** which is quoted here-in-below:-

“(9) “best interest of child” means



the basis for any decision taken regarding the child, to ensure fulfilment of his basic rights and needs, identity, social well-being and physical, emotional and intellectual development;”

38. It would be clear from the above definition that a child’s basic rights have to be ensured and these basic rights also include the right to his personal liberty and paramount importance has been attached to the social well-being and the physical, emotional and intellectual development of the child. Thus, the Act envisages a child friendly approach in the conduct of proceedings under the Act. “Child-Friendly” has been defined under Section 2(15), which is quoted here-in-below:-

“(15) “child friendly” means any behaviour, conduct, practice, process, attitude, environment or treatment that is humane, considerate and in the best interest of child;”

39. Besides other things, the environment or treatment also has to be in the best interest of child as indicated above. The principle of best interest of the child is amongst the various general principles to be followed for the care and protection of children in administration of the Act as enumerated in Chapter 2, Section 3 of the J.J. Act,



some of which are being quoted hereunder:-

“3(i) *Principle of presumption of innocence:* Any child shall be presumed to be an innocent of any *mala fide* or criminal intent up to the age of eighteen years.

(ii) *Principle of dignity and worth:* All human beings shall be treated with equal dignity and rights.

(iv) *Principle of best interest:* All decisions regarding the child shall be based on the primary consideration that they are in the best interest of the child and to help the child to develop full potential.

(v) *Principle of family responsibility:* The primary responsibility of care, nurture and protection of the child shall be that of the biological family of adoptive or foster parents, as the case may be.

(vi) *Principle of safety:* All measures shall be taken to ensure that the child is safe and is not subjected to any harm, abuse or maltreatment while in contact with the care and protection system, and thereafter.

(xii) *Principle of institutionalisation as a measure of last resort:* A child shall be placed in institutional care as a step of last resort after making a reasonable inquiry.”

(xiii) *Principle of repatriation and restoration:* Every child in the juvenile justice system shall have the



right to be re-united with his family at the earliest and to be restored to the same socio-economic and cultural status that he was in, before coming under the purview of this Act, unless such restoration and repatriation is not in his best interest.

(xiv) *Principle of diversion:* Measures for dealing with children in conflict with law without resorting to judicial proceedings shall be promoted unless it is in the best interest of the child or the society as a whole.

(xvi) *Principles of natural justice:* Basic procedural standards of fairness shall be adhered to, including the right to a fair hearing, rule against bias and the right to review, by all persons or bodies, acting in a judicial capacity under this Act.”

40. The primary objective, as be gathered from a combined reading of the aforementioned principles coupled with the very object and reasons of the act, undoubtedly prescribes a procedure of adjudication and disposal of matters in the best interest of child by adopting a child friendly approach and also regards the biological family as the most preferred environment, so far as the primary responsibility of care, nature and protection of child is concerned, while placing a child in institutional care is considered to be a measure of last resort.



41. Now in this context, apprehending a CICL and bringing or producing him before the Board, to be kept in places of safety, which may be the observation homes, remand homes, correction homes etc., vis-a-vis extending him the benefit of anticipatory bail in order to allow him to continue to remain in his family environment, needs to be objectively visualized. This Court is of a firm opinion that so far as the best interest of child is concerned, he ought to remain in his family environment rather than being confined in other places of safety as envisaged under the Act, until and unless there exists strong reasons for the CICL to be kept under such confinement. The Court's concern would always be at liberty to exercise their judicious discretion as to whether the CICL, after taking into consideration the relevant factors of nature of accusation, the social background, the likelihood of his coming into association with anti-social elements etc., whether the CICL deserves to be given the benefit of anticipatory bail or not. However, the denial of the right to a CICL to atleast invoke Section 438 of Cr.P.C., does not seem to be in the best interest of child as the same shall amount to curtailment of personal liberty and



infringes on his basic and fundamental right to freedom. Moreover, we cannot possibly shut our eyes to the harsh social realities of the conditions prevailing in the institutions which are considered as the places of safety.

42. At this juncture, the case laws relied upon by the counsel for the petitioner and the learned Amicus need to be mentioned in order to have further clarity on the issue.

43. Learned counsel for the petitioner and learned amicus curiae have placed strong reliance on the case of *Mohammad Zaid Vs. State of U.P. and another* (Cr.P.C. No.8361 of 2020) heard along with other analogous cases by the Division Bench of the Allahabad High Court headed by Hon'ble the Chief Justice, upon reference being made by the learned Single Judge before the larger Bench. The Court had formulated questions and answered the same by holding that a child in conflict with law will have an equal and efficacious right to seek his remedy for anticipatory bail under Section 438 Cr.P.C. like any other citizen, but with the restrictions imposed in the said provision itself. The relevant portion of para-24 of the judgment



passed in the case of *Mohammad Zaid (supra)* is being quoted hereunder:

“24. This Court, thus, comes to the conclusion that a “child” or a “child in conflict with law” as per the Act 2015 can file an application for anticipatory bail under Section 438 of the Criminal Procedure Code, 1973 and the same would be maintainable. Since there is no bar under Section 438 Cr.P.C. restricting its application.....”

44. Further reliance has been placed on the judgment rendered by the Punjab and Haryana High Court in the case of *Jatin Vs. State of Punjab* (CRM-M-17856-2020 along with 32 analogous petitions) by which the Hon’ble Division Bench of the Court has decided the legal issue regarding maintainability of an application by juvenile for grant of pre-arrest bail under Section 438 Cr.P.C. since conflicting views had been taken by the learned Single Judge of the said Court, in view of the Section 12 of the J.J. Act, 2015. The Court took a broader view by holding that a child in conflict with law, if the intention of 2015 Act is to be kept in mind here, to deny the CICL the benefits as such of approaching the Court for the relief of the anticipatory bail under Section 438 Cr.P.C. would amount to frustrating



the benefits of the legislation. I may usefully quote para-48 and 49 of the judgment passed in the case of *Jatin (supra)*:

“48. The gap apparently regarding how a child would be detained or kept prior to his production before the Board can be highlighted from Rule 9 which provides that if a child in conflict with law is apprehended, he shall be produced before the Board within twenty four hours of his being apprehended, along with a report explaining the reasons for the child being apprehended by the police. Thus, a similarly placed co-accused in a case of a heinous offence is entitled for the benefit of the anticipatory bail, whereas CICL is liable to be detained before he is produced before the Board though he is entitled for the grant of benefit of bail. Under Rule 9(4) also, it is provided that where the CICL is not being apprehended and the information in this regard is forwarded by the police to the Board, the Board shall require the child to appear before it at the earliest. Rule 9(6) further provides that in case the CICL is not produced before the Board or a single member of the Board due to child being apprehended during odd hours or distance, the child is to be kept by the Child Welfare Police Officer in the Observation Home in accordance with Rule 69-D of these Rules or in a fit facility and to be produced before the Board thereafter, within twenty-four hours of apprehending the child. **Thus, there would arise various situations where the child would have necessarily have to forgoe his liberty before being produced before the Board on being apprehended and then detained.**

49. Resultantly, keeping in view the



above, we are of the considered opinion that the broader view has been laid down by the **Chhattisgarh High Court in Sudhir Sharma's case (supra)** and the **Calcutta High Court in Surabhi Jain's case (supra)** and the **Aurangabad Division Bench of the Bombay High Court in Raman's case (supra)** along with the judgment of the **Allahabad High Court in Mohammad Zaid's case (supra)** would be the right way as such to follow. Thus, we do not follow the view which has been taken by the other High Courts i.e. by the Madras High Court in K. Vignesh's case (supra), the Division Bench of the Madhya Pradesh High Court in Ankesh Gurjar's case (supra) and in Suhana Khatun's case (supra) by the Calcutta High Court. Resultantly, we do not approve the views laid down in CRM-M-40284-2017, Ashokpreet Singh @ Showpreet Singh vs. State of Punjab, decided on 20.12.2017; CRM-M-19810-2018, Gurjinder Singh vs. State of Punjab decided on 24.05.2018 and CRM-M-5124-2018, Love @ Aarnav Singh vs. State of Punjab whereas, we approve the view taken in CRM-M-19907-2020, Krishan Kumar (minor) through his mother vs. State of Haryana decided on 24.07.2020.”

45. The second contention raised on behalf of the State with regard to usage of non-obstante clause in Section 12 of the Act dealing with the provision of bail to a CICL providing an overriding effect to the Act of 2015 is now to be dealt with. For ready reference, **Section 12 of the J.J. Act** is being quoted hereunder:



“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 [or a place of safety, as the case may be,] 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.”



46. A careful reading of the above mentioned provision makes it abundantly clear that the said provision deals exclusively with grant of bail to a child, who is said to have committed a bailable or non-bailable offence, and is apprehended or detained by the police or appears or is brought before a Board. This stage can be referred to be a post apprehension stage and it is at this stage that the provisions of Criminal Procedure Code, 1973 have been ousted with the usage of the word “notwithstanding” and hence it is here that the principle of overriding effect comes into play and not at a stage prior to apprehension/detention/appearance or being brought before the Board. Thus, the entire scheme of the Act including Section 12 is no doubt concerned with the best interest of the child in course of its proceeding and the very language of Section 12 of the Act would reveal that the consideration is of a CICL, who is apprehended or detained or brought before the Board. There is no quarrel with the fact asserted on behalf of the State that the J.J. Act is a self-contained Act, having its own scheme and mechanism to be applicable to a child in conflict with law. But, so far as Section 12 is concerned, it contemplates a situation of a child being released on bail only once he has been apprehended, detained or brought before the Board. The



Act is silent on the issue of a child in conflict with law being granted the benefit of anticipatory bail and does not bar the same in any express words as it is not dealing with the stage of pre-apprehension. Such a situation has given rise to different interpretations by different High Courts.

47. In some of the judgments dealing with the said issue, the concept of harmonious construction of statutes has been discussed in order to avoid inconsistency and repugnancy. In my opinion, there is no question of any repugnancy being involved in the question of the right of a child to invoke Section 438 Cr.P.C. as there is apparently no conflict between the two statutes inasmuch as while Section 12 of the J.J. Act deals with the provisions of bail at a post apprehension/detention stage, Section 438 of the Cr.P.C. is concerned with a pre-arrest bail at a pre-apprehension stage. The only thing to be understood and emphasized here is the object of the legislature. **Justice G.P. Singh** in his book on the **Principles of Statutory Interpretation** has referred to the words of **Shah, J.-** “it is a recognized rule of interpretation of statutes that expressions used therein should ordinarily be understood in a sense in which they best harmonize with the object of the statutes and which effectuate the object of the Legislature” as held in the case of



New India Sugar Mills Ltd. Vs. Commissioner of Sales Tax
reported in *AIR 1963 SC 1207*.

48. The book further refers to the case of *Busching Schmitz Pvt. Ltd. Vs. P.T. Meghani* reported in *AIR 1977 SC 1569* wherein it was held that the Court should adopt an object oriented approach keeping in mind the principle that legislative futility is to be ruled out so long as interpretative possibility permits.

49. The concept of rules of ‘purposive construction’ is thus the sound rule of construction with regard to consequences. Justice G.P. Singh has stated that it has been laid down by the Courts that a construction that results in hardship, serious inconvenience, injustice, absurdity or anomaly, which leads to inconsistency or uncertainty and friction in the system, which the statute purports to regulate has to be rejected and preference should be given to that construction which avoids such results. Thus, the Court will adopt that interpretation which is just, reasonable and sensible rather than that which is none of those things.

50. Considering the above-mentioned propositions which have been laid down by the Courts, this Court has no hesitation in taking a view that primacy has to be given to the



object of the legislature and if the concept of anticipatory bail to a juvenile/CICL would have been a not acceptable proposition, the legislature in its wisdom, would have expressly barred the application of the same by making a direct and explicit reference to non-applicability of Section 438 Cr.P.C., which has not been done, as would be clear from a plain language of the statute, which gives an overriding effect to the J.J. Act over the Criminal Procedure Code (making no specific reference to Section 438 Cr.P.C.), at the stage of post-apprehension/detention by way of Section 12 of the Act. At this juncture, it is also noticed that Section 22 of the J.J. Act also starts with non-obstante clause with regard to applications of Cr.P.C. or any preventive detention law for the time being in force but it also creates an express bar to passing of any order under Chapter VIII of the Cr.P.C. against any child. It would also be apt to refer to some other legislations like the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and Bihar Prohibition and Excise Act, where there is an express bar in the statute with regard to the application of Section 438 Cr.P.C. and yet such applications are entertained, if the applicant is able to demonstrate that no offences under the said Acts are made out and thus, the doors are not totally foreclosed with respect to the



maintainability of the anticipatory bail petitions as has been held by the Full Bench of this Court in the case of ***Ram Vinay Yadav Vs. The State of Bihar*** reported in **2019 (2) PLJR 1098 (FB)** and the Hon'ble Supreme Court in the case of **Dr. Subhash Kashinath Mahajan Vs. The State of Maharashtra** reported in **2018 (6) SCC 454**.

51. An analogy can also be drawn from the case of ***Savitri Vs. Govind Singh Rawat*** reported in **(1985) 4 SCC 337: AIR 1986 SC 984**, where the question arose whether a Magistrate can grant interim maintenance under Section 125 Cr.P.C. on the ground that there was no express provision in the Code enabling a Magistrate to pass such an order. **Justice Venkat Ramaiya** had held that "it is the duty of the Court to interpret the provisions of Chapter IX of the Code in such a way that the construction placed on them would not defeat very object of the legislation. In the **absence of any express prohibition**, it is appropriate to construe the provisions of Chapter IX as conferring an implied power on the Magistrate to direct the person against whom an application is made under Section 125 of the Code to pay some reasonable sum by way of maintenance to the applicant pending final disposal of the application". This is how the concept of interim maintenance



under Section 125 Cr.P.C. developed. It was held that such a construction, though it may not always be admissible, in present, however, would advance the object of the legislation under consideration and a contrary view is likely to result in grave hardship to the applicant, who may have no means to subsist until the final order is passed.

52. In the case at hand also, if it is assumed that a child in conflict with law is not entitled to invoke the privilege of anticipatory bail under Section 438 Cr.P.C., the same would not constitute a “purposive construction” and would neither be an “object oriented approach” as the same is likely to cause grave hardship, harassment and humiliation to the applicant, which indeed would not be in the “best interest of the child”.

53. This Court is, thus, in full conformity with the view taken in the case of *Mohammad Zaid (supra)* on this question of overriding effect of the Act of 2015 and para-20 of the same is being quoted hereunder.

“20. The argument that the Act 2015 does not make provision in the nature of Section 438 Cr.P.C. and that Sections 10 and 12 of the Act 2015 are complete Code in themselves; is also not acceptable. Sections 10 and 12 of the Act 2015 operate "after" a child alleged to be in conflict with law is apprehended. Thus, they refer to "post"



apprehension stage. They do not refer to "pre" apprehension stage. Therefore, they cannot be in conflict with the provisions of Section 438 Cr.P.C. The non-obstante clause used in Section 12 operates only when there is a conflict between the provisions of the Cr.P.C. and the provisions of Section 12 of the Act 2015. Since there is no conflict between the provisions of Section 438 of the Cr.P.C. and Section 10 or 12 of the Act 2015, therefore, availability of right under Section 438 Cr.P.C. is not taken away to the detriment of a child. It in no manner creates an ouster for the application of Section 438 Cr.P.C.”

54. The broader view taken in the case of *Mohammad Zaid (supra)* by Allahabad High Court and *Jatin (supra)* by Punjab and Haryana High Court and the views taken by the Chhattisgarh High Court in the case of *Sudhir Sharma Vs. State of Chhattisgarh* reported in (2017) SCC Online Chh 1554, The Jharkhand High Court in the case of *Birbal Munda (supra)*, Bombay High Court in the case of *Raman Vs. State of Maharastra (supra)* and Calcutta High Court in the case of *Surabhi Jain (Minor) and Ors. (supra)* has very recently reiterated and relied upon in the case of *Prince Kumar Vs. State of Bihar* reported in 2025 (4) BLJ 191. It has also been pointed to this court on behalf of the petitioner and learned Amicus Curiae that the Hon’ble Supreme Court vide its order dated 09.10.2023 passed in the case of *Yuvraj Vs. State of Rajasthan*



{Special leave to Appeal (Crl.) No(s). 12659 of 2023} had also entertained an application concerning pre-arrest bail to a juvenile, upon question of maintainability having been raised by the concerned High Court, and upon the prayer of the counsel for an adjournment to bring on record the concerned conflicting judgments of different High Courts, notices were issued. However, the said application had, subsequently, become infructuous and no substantive order could be passed by the Hon'ble Supreme Court but by an order dated 21.02.2024 the Hon'ble Supreme Court left the question of law open with regard to maintainability.

55. Taking all the preceding discussions into consideration, this Court comes to considered conclusion that Section 438 Cr.P.C. emanates from Article 21 of the Constitution of India which encapsulates the concept of personal liberty as a basic and a fundamental right, which is available to all citizens alike without any discrimination and the said provision of Section 438 Cr.P.C. dealing with anticipatory bail/pre-arrest bail would not be treated as an alien concept with respect to a child in conflict with law as the statute itself, being the J.J. Act, 2015, does not provide any express bar to such liberty. The term 'apprehension', being somewhat synonymous



to 'arrest', and thereby amounting to curtailment of personal liberty, the argument advanced on behalf of the State that since there is no concept of arrest under the J.J. Act, there can be no pre-arrest bail, cannot be sustained in view of the detailed discussion made hereinabove.

56. Thus, in order to provide the same liberty and protection of law to a child which is available to an adult for the same offence, also considering that the "best interest of child" is the very foundation upon which the entire edifice of the J.J. Act, 2015 is structured, the child in conflict with law ought to be held entitled to invoke the provisions of Section 438 Cr.P.C. The J.J. Act no doubt, provides for a complete scheme and mechanism of proceedings under the said Act for a CICL, however, Section 12 thereof, dealing with bail to a juvenile at a post-apprehension stage, and further in absence of any express bar upon the applicability of Section 438 Cr.P.C., the provision of anticipatory bail does not get ousted from the purview and rather is in consonance and perfectly in tune with a child-friendly approach, the principle of presumption of innocence and also to the principle of institutionalization as a measure of last resort.

57. This juncture would be the apt moment to quote



the relevant extract of para-8 of the judgment in the case of *Sundeep Kumar Bafna Vs. State of Maharashtra* reported in *(2014) 16 SCC 623*.

“8.....like the science of physics, law also abhors the existence of a vacuum, as is adequately adumbrated by the common law maxim viz. “where there is a right there is remedy”. The universal right of personal liberty emblazoned by Article 21 of our Constitution, being fundamental to the very existence of not only to a citizen of India but to every person, cannot be trifled with merely on a presumptive plane.....”

58. Thus, considering the legal maxim “**Ubi jus ibi remedium**” meaning thereby “**where there is a right, there is a remedy**”, a child in conflict with law cannot be said to have no right to anticipatory bail which is available to other citizens as neither the Constitution of India nor the Code of Criminal Procedure makes any such distinction with respect to a ‘child’. And when there is no denial of such right based on personal liberty, a CICL cannot be left remedyless, by denying him/her to approach the Courts for grant of anticipatory bail by invoking the provision of Section 438 Cr.P.C.

59. Thus, taking a holistic view and balancing the rights and remedies, one can reach a safe conclusion that the jurisdiction of a High Court or the Court of Sessions under



Section 438 Cr.P.C. does not get extinguished by the provision of Section 12 (1) of the J.J. Act and a child in conflict with law, thus, is also entitled to invoke Section 438 Cr.P.C. for grant of anticipatory bail and the same would warrant consideration if it falls within the parameters of the grant of the same, which includes the gravity and seriousness of the accusations, the criminal antecedents etc. with a further consideration of exceptional situations of bringing him into association with any known criminal, exposing him/her to moral, physical or psychological danger or defeating the ends of justice. These situations, as carved out under the proviso to Section 12(1) of the J.J. Act, can be relevant considerations. There is however, no ambiguity on the point that once the anticipatory bail is either granted or rejected to a child in conflict with law, by the Sessions Court or High Court, in both the situations, he/she is required to appear before the J.J. Board within a reasonable period of time as fixed by the Court passing such order, for participating in further proceedings relating to enquiry, proper assessment of age and other proceedings, strictly adhering to the scheme of the Act.

60. It may also be noted that for consideration of an anticipatory bail under Section 438 Cr.P.C. of a juvenile, a



preliminary and objective satisfaction with regard to the age and juvenility should be a precondition and an interim protection may be granted to the CICL for the period till such satisfaction is recorded by the Court concerned. However, once the matter of anticipatory bail is finally decided, either in favour or against the CICL, he/she would be required to submit to the exclusive jurisdiction of the J.J. Board, which would include appearance before the Board for the purpose of executing personal bond etc. with like sureties of parents/guardians etc., as ordered, in case of grant of anticipatory bail and a copy of the entire records of the case would need to be transferred to the concerned J.J. Board without any delay and the proceedings under the J.J. Act would immediately commence. Once the child has appeared before the Board, the J.J. Board would have complete and exclusive jurisdiction in view of the provisions of the J.J. Act to hold an enquiry as contemplated under Section 94 of the Act. The J.J. Board would be fully within its rights to pass any order and take any view which is in the best interest of child also to the extent that if at any future point of time the Board is of the view that a necessity, supported by reason, has arisen for placing the child under some specialized guidance and supervision, the order passed under Section 438 Cr.P.C. would not act as an



impediment and also in cases of flouting of the conditions of anticipatory bail, which ought to include cooperation in the proceedings before J.J. Board, the Board would be at liberty to exercise its power to undertake suitable measures under the Act for ensuring the appearance of the child. It is however made clear that at the stage of granting or rejecting the prayer of anticipatory bail to a juvenile, the Courts are only treating the applicant to *prima facie* be a child and not determining his age. There is a clear distinction between treating and determining, and a proper course of determination of age, being provided under the J.J. Act, the applicant has to submit to the exclusive jurisdiction of the J.J. Board for the same and for further proceedings thereunder.

61. This Court thus clarifies the position that by entitling a CICL to invoke the provision of Section 438 Cr.P.C., there is no intention to cause usurping of the special powers of the J.J. Board or cause any encroachment upon the jurisdiction of the J.J. Board, rather the objective and purpose is only to provide protection to a child who may be in conflict with law, from the humiliation and trauma of being apprehended or detained in any form, during the procedures related to enquiry etc. Also keeping in mind the fact that when an adult, for the



same offence is considered for grant of anticipatory bail, there is no plausible reason or justification as to why a child would not be extended the same privilege in the background of the fact that the special statute for children does not provide any express bar to the same. The underlying principle and guiding force in delving into the entire discussion made here-in-above is fostering the right of personal liberty as envisaged under the Constitution of India, which is the mother of all legislations.

62. Now, coming to the facts of the present case, it is noticed that the petitioner has been made an accused for an offence under Section 394 of the IPC. The prosecution case is that three unknown miscreants had robbed the informant of his belongings, including an amount of Rs. 3,06,000/-, mobile and gold rings on the point of pistol on 23.02.2021 at around 06:45 P.M. It is further alleged that once the miscreants started fleeing away on the motorcycle and the informant went running after them and shouting, one of the persons, who was being addressed as Manoj also resorted to firing. During the course of investigation, it has transpired that the petitioner had been arrested with a loaded country made pistol and live cartridges on 25.02.2021 for which Barhara Krishna Garh P.S. Case No. 125 of 2021 was lodged under Section 25(1-b)a/26 of the Arms Act



and a confessional statement was also recorded wherein he admitted his guilt and upon his confessional statement, the motorcycle used in the offence was recovered from the dalan of co-accused Manoj Kumar Yadav.

63. It has, however, been submitted on behalf of the petitioner that there is no substantial material against the petitioner in the present case and he has been made an accused only on the basis of his confessional statement which has no evidentiary value. It is further submitted that prior to 25.02.2021, when Barhara Krishna Garh P.S. Case No. 125 of 2021 was registered, he had no criminal antecedent and the petitioner is a student. The learned APP has, however, oppose the grant of anticipatory bail on the ground of seriousness of offence as also his criminal antecedent.

64. Taking into consideration, the nature of occurrence, and particularly the facts that he was arrested with arms in the other case coupled with his confession leading to recovery, this Court is not inclined to grant benefit of anticipatory bail to the petitioner and hence, he is directed to appear before the J.J. Board within a period of four weeks for consideration of bail under Section 12 of the J.J. Act. It is, however, made clear that since the period of both the crimes is



the same, the petitioner would not be required to undergo the entire exercise of his age assessment as by an order dated 20.03.2021 passed by the J.J. Board Bhojpur, Ara in J.J. Board No. 930 of 2021 arising out of Krishnagadh (Barhara) P.S. Case No. 125 of 2021, he has already been declared a juvenile and by a subsequent order dated 24.03.2021 passed by the said Board (Annexure-5), he had been granted the privilege of bail upon undertaking given by the guardian of the petitioner.

65. The application for anticipatory bail is thus rejected with the above-mentioned observations and directions.

66. Before parting with the judgment, I would be failing in my duty if I don't record my appreciation for the efforts taken by Mr. Abhay Shankar Singh, the learned Amicus Curiae, Mr. Nadim Seraj, learned GP-5 as also Mr. Ravindra Kumar, learned counsel for the petitioner for assisting this Court with due sincerity and diligence.

(Soni Shrivastava, J)

Harsh/-

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