

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****CRIMINAL MISC.APPLICATION (FOR REGULAR BAIL) NO. 22077 of 2017**

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RAHULKUMAR @ PAPPU KAMLESHBHAI PANCHAL....Applicant(s)

Versus

STATE OF GUJARAT....Respondent(s)

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Appearance:

MR RAJKUMAR CHAUMAL, ADVOCATE for the Applicant(s) No. 1

MR KP RAVAL ADDITIONAL PUBLIC PROSECUTOR for the Respondent(s)  
No. 1**CORAM: HONOURABLE MR.JUSTICE G.R.UDHWANI****Date : 20/09/2017****ORAL ORDER**

1. Heard learned advocate for the applicant and learned APP for the respondent-State.
2. This application is filed seeking bail under Section 439 of the Code of Criminal Procedure, 1973 in respect of the offences punishable under Sections 454, 457, 380 and 114 of the Indian Penal Code for which FIR came to be registered at C.R. No.I- 20 of 2017 with Talod Police Station.
3. Concededly as per the provisions of the Juvenile Justice ( Care and Protection of Children) Act, 2015 [for short 'the Act'], a person

under the age of 18 years is a juvenile and if he is found in conflict with law as indicated in the said Act, he cannot be described as an offender but only as a juvenile in conflict with law.

4. From the rival submissions, it appears that in the statement made under Section 161 of the Code of Criminal Procedure, the petitioner revealed his age as 19 years on 31.08.2017 and the investigating officer being unmindful of the fact that on 21.03.2017 when the petitioner is alleged to have committed the offence, he was not an offender but a juvenile in conflict with law as indicated in various provisions of the Act; his birth date being 10.04.1999 as reflected in School Leaving Certificate/Birth Certificate issued by Shri C.V. Gandhi High School; produced him before the Magistrate under Section 167 of the Code of Criminal Procedure. In the meanwhile it appears that he learnt from the certificate the date of birth of the petitioner as revealed in the School Leaving Certificate; that he was juvenile in conflict with law and brought the said fact to the notice of the learned Judicial Magistrate First Class, Talod in his report. Along with the report birth certificate of the petitioner was also produced by him. However it appears that no heed was paid by the learned Judicial Magistrate First Class, Talod to the fact that the petitioner was a juvenile in conflict with law as on 21.03.2017. The petitioner seems to have been sent to the judicial custody and when he applied for bail before the court of Sessions, Sabarkantha with Criminal Misc. Application No. 513 of 2017, the fact that the petitioner was a

juvenile was not brought to the notice of the Sessions Court; consequently the petitioner came to be dealt with as non juvenile and his bail application was considered not under Section 12 of the Act but under Section 439 of the Code of Criminal Procedure.

5. It is unfortunate that the learned Judicial Magistrate First Class, Talod was unmindful of the provisions of the Act when it was brought to his notice that the applicant was juvenile. Once the said fact was brought to the notice of the learned Judicial Magistrate First Class, Talod, it was obligatory for him to deal the applicant under Sections 10 and 12 of the Act.

6. Section 10 of the Act deals with the procedure to be followed when juvenile is found to be in conflict with law. Section 12 thereof deals with the bail for the juvenile. While section 10 requires the police to place the juvenile found to be in conflict with law under the charge of special juvenile police unit or the designated child welfare police officer for the purpose of production of the child before the Board without any loss of time but within a period of 24 hours of apprehending the child excluding the time spent for journey, Section 12 focuses on interest and welfare of minor and not his freedom for the purpose of his detention or bail. Section 12 makes it clear that even if the juvenile is apprehended by the police, he can no more be in the custody of the police after apprehension but must be in charge of the special juvenile police unit or

designated Child Welfare Police Officers who are trained for the purpose of Juvenile Justice Act.

7. A bare look at Section 12 would indicate that the provision of Criminal Procedure Code or any other similar law is overridden and the release of juvenile on the bail is contemplated with or without surety or his placement under the supervision of a probation officer or under the care of any fit person is contemplated and the scheme of the section 12 would further reveal that bail to the juvenile must be denied on the reasonable belief of his likelihood of coming in association with any criminal or his likelihood of exposure to moral, physical or psychological danger or otherwise his release would defeat the end of justice and in case of denial of bail, he is required to be sent to an observation home or a place of safety for a specified period during the pendency of inquiry. Thus the law does not contemplate police custody of a juvenile and unfortunately because of the careless approach noted above, the juvenile in conflict with law was in the police custody and now in the judicial custody since 12.08.2017. Continued custody of the juvenile is likely to defeat the very purpose of the act inasmuch as his possibility of coming into contact with the hard-core criminals in jail cannot be ruled out. Therefore, the petitioner is required to be placed in observation home immediately in compliance with Section 12 of the Act and his case is also required to be taken up for bail under Section 12 of the Act.

8. However the prayer under Section 439 of the Code of Criminal Procedure for admitting the petitioner to bail cannot be considered by this Court inasmuch as it is for the authority under Section 12 of the Act to take into consideration various aspects including the interest of juvenile.

9. In the above circumstance this petition is required to be partly allowed by directing the placement of the juvenile in the observations home pending consideration of his application for bail under Section 12 of the Act. The application shall be treated as an application for bail under Section 12 of the Act.

10. Rule is made absolute to the aforesaid extent. Direct service is permitted today.

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(G.R.UDHWANI, J.)