



2026:AHC:5931

HIGH COURT OF JUDICATURE AT ALLAHABAD
CRIMINAL MISC. BAIL APPLICATION No. - 38580 of 2025

Rajprakash Alias Aniket

.....Applicant(s)

Versus

State Of U.P. And 3 Others

.....Opposite
Party(s)

Counsel for Applicant(s)	:	Upendra Upadhyay
Counsel for Opposite Party(s)	:	G.A., Shivam Yadav

Court No. - 66

HON'BLE KRISHAN PAHAL, J.

1. List has been revised.
2. Heard Sri Upendra Upadhyay, learned counsel for applicant, Sri Aditya Yadav, learned Advocate holding brief for Sri Shivam Yadav, learned counsel for the informant and Sri R.P. Patel, learned State Law Officer and perused the material placed on record.
3. The present bail application has been filed by the applicant in Case Crime No. 374 of 2021, under Sections 452, 302, 376 IPC and 3/4 POCSO Act, Police Station Dholna, District Kasganj, with the prayer to enlarge him on bail.
4. Learned counsel for the applicant has stated that the applicant has been falsely implicated in the case. He is in jail since 11.11.2021, as such, his fundamental rights enshrined under Article 21 of the Constitution of India stands violated. The trial is not moving ahead, as only two witnesses, that too, formal in nature, have been examined in the intervening period. Of the four accused nominated in the FIR, three have been exonerated by the police and the same was not challenged by the informant, as such, the applicant is also entitled for bail. In case, the applicant is released on bail, he will not misuse the liberty of bail.
5. Per contra, learned counsel for the informant has stated that the applicant has filed an application for declaring him to be juvenile and the same is pending, as such, during the pendency of the said application it cannot be

decided that the applicant is juvenile, so the applicant cannot apply u/s 439 Cr.P.C. The applicant cannot take advantage of two provisions at a time. Learned counsel has placed reliance on the judgement of a co-ordinate Bench of this Court passed in Criminal Misc. Bail Application No. 52149 of 2019, decided on 21.7.2023 paragraphs whereof are as follows:-

13. Learned A.G.A. for the State at the very outset raises a preliminary objection that the present application under Section 439 Cr.P.C. is not maintainable in as much as a remedy for declaring the applicant as a juvenile is being pursued seriously and as such the applicant cannot resort to take advantage of two laws at a time being the Juvenile Justice (Care and Protection of Children) Act, 2015 and the Code of Criminal Procedure, 1973. It is argued that since even in the Juvenile Justice Act there is a provision for grant of bail to an accused and the accused is exploring the remedy of being declared as a juvenile therein he cannot be permitted to invoke the provisions of Cr.P.C. for bail. The present bail application is not maintainable. It is argued that the applicant can either choose to invoke the provisions of the Cr.P.C. or of the Juvenile Justice Act but cannot pursue the remedy in one Act during the pendency of another and take benefit of whichever he can get at an earlier point of time. It is argued that as such the present bail application is not maintainable and be dismissed as such.

14. The issue whether the provisions of Sections 437 and 439 Cr.P.C. can be invoked for grant of bail simultaneously by an accused while he is pursuing his remedy of being declared a juvenile diligently is the issue before this Court.

15. In a case before the Chhattisgarh High Court, a Division bench was faced with a reference made by a learned single Judge. The case of *Tejram Nagrachi Juvenile Vs. State of Chhattisgarh Through the Station House Officer* : 2019 SCC OnLine Chh 24 was referred to a Division Bench with the following reference:

"1. These two bail applications under Section 439 of the Code of Criminal Procedure (for short "the Code") have been placed before us for answering the reference made by the learned Single Judge while deferring with the view taken by the coordinate Bench in the matters of Mohan v. State of CG (2005 Cri L J 3271 : 2005 SCC OnLine Chh 126) followed in Subhash Kumar @ Sonu v. State of Chhattisgarh (MCrC No. 5651/2014, order dated 28.11.2014). While the view in Mohan and Subhash Kumar @ Sonu was that despite the provisions contained in Section 12 of the Juvenile Justice (Care and Protection of the Children) Act, 2000, which is pari materia to the Juvenile Justice (Care and Protection of Children) Act, 2015

(henceforth "the Act of 2015"), the bail application under Section 439 of the Code is maintainable before the Sessions Court and the High Court, correctness of the view has been doubted by the learned Single Judge and the following question has been referred for decision by a Bench of Two Judges:-

"Whether in view of non obstante clause contained in Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015, provisions under Section 437 and 439 of Cr.P.C. are applicable for being invoked for grant of bail by a child in conflict with law as defined under the Juvenile Justice (Care and Protection of Children) Act, 2015."

2. In Mohan (Supra), it is held in para-13 that the Act does not take away the power and jurisdiction of the High Court or Court of Session regarding bail as provided under Sections 438 and 439 of the Code. Similar view was taken by another coordinate Bench in the matter of Subhash Kumar @ Sonu, referred to above, holding thus at para-12:-

"12. Thus, taking into consideration the provisions contained in sub-section (2) of Section 6 of the Act, 2000, it is quite vivid that power conferred to the Juvenile Justice Board under the Act, 2000 can also be exercised by the High Court and the Court of Session either in appeal or revision or otherwise and the word 'otherwise' also includes proceeding under Section 439 Cr.P.C. Thus, I hold that this bail application under Section 439 of the Cr.P.C., by the juvenile on refusal to grant bail by the Court of Session, is maintainable under law and it is held accordingly."

3. Taking contrary view, the learned Single Judge would conclude thus at para-18 of the Reference Order:-"

18. Analyzed as above, the Juvenile Justice (Care and Protection of Children) Act, 2015 contains provision for grant of bail which is different from the scheme of grant of bail under Section 437 or 439 of Cr.P.C. as both operate on different considerations, though some of the considerations

like consideration that grant of bail is likely to defeat the ends of justice could be relevant in both the cases. Therefore, it is vividly clear that the two schemes for grant of bail, one with regard to post arrest bail found under Section 437 & 439 of Cr.P.C. and other found under Section 12 of the Act of 2015 are inconsistent with each other and there is a great degree of repugnancy between them. While considering application for grant of bail under Section 439 Cr.P.C., mere gravity of allegations by itself may be ground for rejecting the bail but that considerations may not apply while considering grant of bail to a juvenile. Similarly, the Juvenile Justice Board shall have to reject the application for grant of bail of juvenile, if there appears to be reasonable ground for believing that release may expose the juvenile to moral, physical or psychological danger, which may not be relevant while considering application for grant of bail under Section 437 or 439 of Cr.P.C. Therefore, a comparative reading of the scheme for grant post arrest bail under general law and the special law reveals that the two schemes are inconsistent with each other. If this kind of conflict, inconsistency or repugnancy exists, non obstante clause would operate to exclude the applicability of general provisions relating to bail contained under the Code of Criminal Procedure to the extent, it is inconsistent with the scheme of grant of post arrest bail under Section 12 of the Act of 2015. It is equally settled proposition of law that where there is no special provision made in special law and it is silent on a particular aspect, the provisions of general law will hold field and would be applicable."

16. The Division Bench answered the reference as follows:

"16. To sum up, we hold that grant of bail to a juvenile is required to be dealt with under Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015 and not under Sections 437 or 439 of the Code of Criminal Procedure. Hence, these applications for grant of bail are not maintainable."

17. The applicant is pursuing his remedy available to him under the Juvenile Justice (Care and Protection of Children) Act, 2015. He cannot simultaneously pursue a remedy under the Code of Criminal Procedure. His attempt to get himself declared as a juvenile although did not find favour with the Court concerned dealing with the application of his mother for declaring him a juvenile but against the same a criminal revision has been filed before the High Court which has been admitted and notices have been issued to the State and the contesting respondents and also the original records of inquiry made by the trial court have been summoned. The applicant cannot be permitted to pursue remedies under two Act simultaneously especially when both the Act have the provision of final result.

18. In view of the facts of the case and the issue as decided on reference by a Division Bench, the present bail application is dismissed as not maintainable.

6. This Court had called for the status of trial. The said report received from the trial court indicates that the court has taken cognizance in the matter on 27.1.2022 and charge was framed against the applicant on 11.4.2023. Meanwhile, the application for declaring juvenile was filed in this Court and the same was sent to Juvenile Justice Board for disposal. The Juvenile Justice Board has decided the age of the applicant to be 18 years 9 months and 22 days. Against the said order, the appeal no. 28 of 2023 was filed before the Sessions Court and as per the order dated 1.11.2023, no summon was to be issued in the file against the witness till the Appeal No. 28 of 2023 is pending. The said appeal was disposed off on 4.1.2025 with the direction for redetermination of the age to be done by the Juvenile Justice Board. Subsequently, the Juvenile Justice Board decided the age of the delinquent to be 17 years 10 months and 28 days vide order dated 4.7.2025. The said order has been challenged and an appeal was filed on 9.9.2025, which is pending for disposal of Section 5 Limitation Act in POCSO Court. Meanwhile, the Exclusive POCSO Court summoned two witnesses PW-1 and PW-2. They were examined and their Chief was recorded but cross-examination could not be completed.

7. After hearing learned counsel for the parties, it follows from the aforesaid status report received from the trial court, the applicant is juvenile as per date, although the said declaration of juvenile is under challenge before the POCSO Court. Under these circumstances, the bail application is found devoid of merits and cannot be entertained under Section 483 B.N.S.S. and is, accordingly, **rejected** with a liberty to the applicant to take recourse as per

Juvenile Justice Act.

8. However, it is directed that the aforesaid case pending before the trial court be decided expeditiously as early as possible in view of the principle as has been laid down in the recent judgments of the Supreme Court in the cases of ***Vinod Kumar vs. State of Punjab; 2015 (3) SCC 220*** and ***Hussain and Another vs. Union of India; (2017) 5 SCC 702***, if there is no legal impediment.

9. It is clarified that the observations made herein are limited to the facts brought in by the parties pertaining to the disposal of bail application and the said observations shall have no bearing on the merits of the case during trial.

(Krishan Pahal,J.)

January 9, 2026

Shalini