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# Law Relating to Bail to Juvenile Delinquent

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SONIA KINRA<sup>1</sup> AND DR VERSHA VAHINI<sup>2</sup>

## ABSTRACT

*The aim of the Juvenile Justice (Care and Protection of Children) Act, 2000 is based upon the rights of the Juvenile recognised by the United Nations Convention on the Rights of the Child 1989. To grant bail to the Juvenile is a rule, and jail is an exception. The three exceptions have been statutes in section 12 of the Act. The various High Courts and the Apex Court have interpreted these exceptions. This paper aims at the directions to be followed while deciding the bail applications of the juveniles and considering the circumstances if the same falls under the exception or not. There is no need for subjective satisfaction of the Juvenile Board, but an objective assessment of the reasonable grounds is to be there for declining the bail to the Juvenile, which should be based upon some material. It should not be a mechanical representation of the legal provision.*

**Keywords:** JJ Act, UNCRC, Heinous Offences, Child in Conflict with Law.

## I. INTRODUCTION

Owing to age and maturity level, the child belongs to the most vulnerable class of society. Thus, it will not be justified to expose a child to the traditional criminal justice system.

Keeping in mind the vulnerability of a child earlier, the Children Act, 1960 was the Central Legislation post-independence that aimed to conceptualise the Juvenile Justice System separated from the Criminal Justice System under the Code of Criminal Procedure, 1973. Under the said Act, “Child” was defined as a girl who had not attained 18 years of age or a boy who had not attained 16 years of age.

Thereafter, the first comprehensive legislation having countrywide application except Jammu & Kashmir was enacted in the form of the Juvenile Justice Act, 1986. However, the age of the child was kept the same as in the Act of 1960.

In the year 1992, India signed the United Nations Convention on the Rights of the Child (1989), which defined the term ‘Child’ as every human being below the age of 18 years.

Being a signatory to the above convention, India sought to fulfil its international obligation by

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<sup>1</sup> Author is the Additional District & Sessions Judge-cum-Faculty Member at Chandigarh Judicial Academy, India.

<sup>2</sup> Author is the Head of Department at Department of Laws, Manav Rachna University, India.

enacting the Juvenile Justice (Care and Protection of Children) Act, 2000. In this Act, a major change was of the age of juveniles which was fixed at 18 years irrespective of gender.<sup>3</sup>

In December 2012, the barbaric gang rape and murder of female physiotherapy studying in Delhi retriggered the discussion on the age limit of the Juvenile as one of the accused who has attributed a most ghastly role in the crime was 17 years of age.

The Committee on the amendments to Criminal laws, headed by Justice J.S Verma, was constituted specifically to examine the deficiencies in the existing criminal law regime governing sexual assault against women, but it categorically rejected the demand for lowering the age of juveniles to 16. Instead, it recommended the need to reform and restructure the existing JJ Act, 2000.

However, the Government dismissed the recommendations of the Justice Verma Committee and headed two popular demands by introducing the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter ascribed to Act of 2015) and Juvenile Justice (Care and Protection of Children) Model Rules, 2016.

The Act differentiated between the children and categorised them under two categories as follows :

- a. Children in Conflict with the Law
- b. Children in need of care and protection

The idea is to have parallel forums for both kinds of children. It emphasises upon treatment of children in conflict with the law and the root problems of offending behaviour, measures to prevent such behaviour and then their rehabilitation in society.

Keeping in view the pitfalls left in the Act of 2015 and the present day scenario, the Legislature brought the amendments in the Act of 2015 through The Juvenile Justice (Care and Protection of Children) Amendment Act, 2021, enforced on 9<sup>th</sup> of August, 2021.

## **II. APPLICATION OF THE ACT**

**Section 1 (4)** of the Act contains a non-obstante clause overriding any other law and stipulates that provisions of the Act shall apply to all matters concerning children who are in conflict with the law; and children who are in need of care and protection, including—

Detention, apprehension, penalty, prosecution or imprisonment, rehabilitation and social

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<sup>3</sup> *Juvenile Justice Act*, SCC Online (August 1, 2021, 1:05 PM), <https://www.sconline.com/blog/post/tag/juvenile-justice-act/>.

reintegration of children in conflict with the law.

Decisions or orders and procedures relating to rehabilitation, adoption, reintegration and restoration of children in need of care and protection.

### **III. SOME OF THE IMPORTANT DEFINITIONS FOR READY REFERENCE ARE AS FOLLOWS**

**Section 2 (9) “Best Interest of Child”** means the basis for any decision taken regarding the child to fulfil one’s fundamental rights and needs, identity, social wellbeing and physical, emotional and intellectual development. The Act distinguishes a child in conflict with the law and a child in need of care and protection and provides a different mechanism to deal with them.<sup>4</sup>

**Section 2 (12)** defines the term “**Child**” as a person who has not completed 18 years of age.<sup>5</sup>

**Section 2 (3)** defines the term “**Child in conflict with law**” as a child who is alleged or has committed an offence and has not completed 18 years on the date of commission of such offence.<sup>6</sup>

**Section 2 (14) of the Amendment Act 2021 defines the term “Child in need of care and protection”.** It lists 12 categories of children in different situations. The categories are a child-

- (i) who is found without any home and settled place of abode and without any ostensible means of subsistence; or
- (ii) who is found working in contravention of **the provisions of this Act** labour laws for the time being in force or is found begging, or living on the street; or
- (iii) who resides with a person (whether a guardian of the child or not) and such person –
  - (a) injured, exploited or abused or neglected the child or has violated any other law for the time being in force meant for the protection of a child; or
  - (b) has threatened to kill, injure, exploit or abuse the child, and there is a reasonable likelihood of the threat being carried out; or
  - (c) has killed, abused, neglected or exploited some other child or children, and there is a reasonable likelihood of the child in question being killed, abused, exploited or neglected by that person; or

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<sup>4</sup> Juvenile Justice (Care and Protection of Children) Act, 2015.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

- (iv) who is mentally ill or mentally or physically challenged or suffering from terminal or incurable disease, having no one to support or look after or having parents or guardians unfit to take care, if found so by the Board or the Committee; or
- (v) Who has a parent or guardian and such parent or guardian is found to be unfit or incapacitated, by the Committee or the Board, to care for and protect the safety and well-being of the child; or
- (vi) Who does not have parents and no one is willing to take care of and protect or who is abandoned or surrendered; or
- (vii) Who is missing or runaway child, or whose parents cannot be found after making reasonable inquiry in such manner as may be prescribed; or
- (viii) Who has been or is being or is likely to be abused, tortured or exploited for the purpose of sexual abuse or illegal acts; or
- (ix) Who is found vulnerable and has been or is being or is likely to be inducted into drug abuse or trafficking; or
- (x) Who is being or is likely to be abused for unconscionable gains; or
- (xi) Who is a victim of or affected by an armed conflict, civil unrest or natural calamity; or
- (xii) Who is at imminent risk of marriage before attaining the age of marriage and whose parents, family members, guardians and any other persons are likely to be responsible for the solemnisation of such marriage<sup>7</sup>

**Section 2 (15) “Child friendly”** means any behaviour, conduct, practice, process, attitude, environment or treatment id est humane, considerate, and in the child’s best interest.<sup>8</sup>

**Section 2(20) “Children’s Court”** means a court established under the Commissions for Protection of Child Rights Act, 2005 (4 of 2006) or a Special Court under the Protection of Children from Sexual Offences Act, 2012 (32 of 2012), wherever existing and where such courts have not been designated, the Court of Sessions having jurisdiction to try offences under the Act.<sup>9</sup>

**Section 2 (33) defines “Heinous Offences”** as which constitutes the offences for which the minimum punishment is seven years under the IPC or any other law.

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<sup>7</sup> Ibid

<sup>8</sup> Ibid.

<sup>9</sup> Ibid

**Section 2 (45) “Petty Offences”** includes the offences for which the maximum punishment under the Indian Penal Code, 1860 or any other law is imprisonment up to a period of three years.<sup>10</sup>

Under **Section 2 (54)**, the term “**Serious Offences**” under the **Amendment Act 2021** includes the offences for which the punishment under the Indian Penal Code or any other law for the time being in force is -

(a) minimum imprisonment for a term of more than 3 years and not exceeding 7 years;  
or

(b) maximum imprisonment for a term of more than 7 years, but no minimum imprisonment or minimum imprisonment of fewer than 7 years is provided.<sup>11</sup>

Under **Section 2 (35)**, the term “**Juvenile**” means a child who is below the age of eighteen years.<sup>12</sup>

**Section 2 (61)** states that all the words and expressions that are used but not defined in the JJ Act and are defined in other acts shall have the meanings respectively assigned to them in those Acts.<sup>13</sup>

#### **IV. BAIL TO A CHILD IN CONFLICT WITH LAW SECTION 12**

Section 12 of the Act of 2015 deals in bail to a person who is a child alleged to be in conflict with the law :

(1) When any person, who is apparently is 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 or in any other law in 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 individual shall not be so released if there appear reasonable grounds for believing that the release is likely to bring that person into association with any known criminal or expose the said individual to moral, physical or psychological danger or the person’s release would defeat the ends of Justice, and the Board shall also record the reasons for denying the bail and circumstances that led to such a decision.<sup>14</sup>

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<sup>10</sup> Ibid.

<sup>11</sup> Ibid

<sup>12</sup> Ibid

<sup>13</sup> Ibid.

<sup>14</sup> *Whether juvenile is entitled to get anticipatory bail?*, Law Web (August 1, 2021, 1:07 PM), <https://www.law>

(2) When such person having been apprehended is not released on bail under subsection (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** in such manner as may be prescribed until a person can be brought before a Board.<sup>15</sup>

(3) When such person is not released on bail under subsection (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.<sup>16</sup>

(4) When a child in conflict with the law is unable to fulfil the conditions of a bail order within 7 days of the bail order, such child shall be produced before the Board for modification of the conditions of the bail.<sup>17</sup>

#### **(A) Intention of the Legislature**

Section 12 of the Act of 2015 conveys the intention of the Legislature with regard to bail to the Juvenile regardless of nature or gravity of the offence alleged to have been committed by him. It is based on the principle that bail is a rule and jail is an exception. The bail of a Juvenile can be rejected only under three circumstances, i.e.:

- a. in the case where there seem reasonable grounds for believing that the release might bring the individual into association with any known criminal; or
- b. expose the individual to moral, physical or psychological danger; or
- c. that his release shall defeat the ends of Justice.<sup>18</sup>

#### **(B) Word “Shall”**

When the consideration of bail under Section 12 of the 2015 Act is considered, the merit or nature of the offence has no relevancy. The language of Section 12 of the 2015 Act, using the word “shall” is mandatory in nature and providing non-obstante clause by using the articulation “notwithstanding anything contained in the Cr.P.C. or any other law for the time being in force be released on bail” shows the intention of the Legislature to grant bail to the delinquent Juvenile by releasing him on bail which is arrested or produced before a Court. However, with exception to release him on bail if there are reasonable grounds for believing that his release

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[web.in/2018/06/whether-juvenile-can-file-application.html](http://web.in/2018/06/whether-juvenile-can-file-application.html).

<sup>15</sup> Ibid.

<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

<sup>18</sup> P&H HC/ A juvenile has to be released on bail mandatorily unless and until exceptions carved out in proviso Section 12 (1) of J.J. Act, 2015 itself are made out, SCC Online (August 2, 2021, 2:00 PM), <https://www.sconline.Come/blog/post/2021juvenile-justice-act/>.

might bring him into association with any criminal or expose him to psychological, physical, moral danger or that his release would defeat the ends of Justice. The prosecution has to bring on record any such material while opposing the bail and to make out any of the grounds mentioned in this Section which may persuade the Court not to release the Juvenile on bail.<sup>19</sup>

### **(C) Non-obstante clause**

The Juvenile Justice Board has been bestowed with the powers of a Judicial Magistrate First Class or a Metropolitan Magistrate. The non-obstante clause contained in Section 12 of the 2015 Act has an overriding effect against those provisions, which empowers Judicial Magistrate First Class or Metropolitan Magistrate to decide the matter of bail. These relevant provisions are Sections 436 and 437 of the Code of Criminal Procedure. Therefore, although specific limitations have been imposed under Sections 436 and 437 of the Cr.P.C. for releasing the person arrested or detained or appears or is brought before a Court, yet Juvenile Justice Board, if conditions mentioned under Section 12 are fulfilled, has the power to release the Juvenile on bail.

### **(D) Entitlement for bail**

The provision contained in Section 12 of the Act of 2015 lays down that if a juvenile is detained or arrested and is brought before the Juvenile Justice Board, then such a person shall be released on bail. Hence, a juvenile has to be released mandatorily on bail unless and until the exceptions carved out in the Section itself are made out. The exceptions are:

- (a) reasonable ground for believing that the release might bring the Juvenile into association with any known criminal;
- (b) juvenile's release is likely to expose the Juvenile to any psychological, moral, or physical danger; and
- (c) juvenile's release would defeat the ends of Justice.<sup>20</sup>

## **V. EVOLUTION OF LAW ON BAIL OF JUVENILES**

### **a) Nand Kishore (in JC) v. State<sup>21</sup>**

The Delhi High Court, while dealing with the first exception, held that "as regards the first exception, before it can be invoked to deny bail to a juvenile there must be a reasonable ground for believing that his release is likely to bring him into association with any known criminal.

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<sup>19</sup> Can the court refuse to bail a juvenile above 16 years of age prosecuted for a heinous offence?, My Nation Knowledge Base (August 2, 2021, 2:50 PM), <https://mynation.net/docs/60-2021/>.

<sup>20</sup> (August 2, 2021, 2:55 PM), <https://delhicourts.nic.in/july06/NAND%20KISHORE%20VS.%20STATE.pdf>.

<sup>21</sup> 2006 (4) RCR (Criminal) 754.



The expression 'known criminal' is not without significance. When the liberty of a juvenile is sought to be curtailed by employing the exception, the exception must be construed strictly. Therefore, before this exception is invoked, the prosecution must identify the 'known criminal' and then the court must have reasonable grounds to believe that the Juvenile if released on bail, would associate with this 'known criminal'. It cannot be generally observed that the release of the Juvenile would bring him into association with criminals without identifying the criminals and without returning a prima facie finding with regard to the nexus between the Juvenile and such criminal..."<sup>22</sup> the existence of such ground should not be mere guesswork of Court, but it should be substantiated by some evidence on record.

**b) Happy v. State of Haryana<sup>23</sup>**

The High Court of Punjab and Haryana has held that the word "association" has been defined in Concise Oxford Dictionary (6th Edition) as an act of associating an organised body of persons for a joint purpose; fellowship, companionship; the mental connection between related ideas. The above meaning of the word "association" has also been adopted in Legal Glossary, Government of India, 1988 Edition. Thus, to prove "association", it must be shown that the persons so joined have a common purpose and that there is a mental connection between their related ideas. In such view of the matter, if a person has joined a known criminal or criminals only in a single case, by that, it cannot be inferred that this single Act would bring that person in association with known criminal(s). There can be apprehension of his associating with known criminal(s) only when there is sufficient evidence to show that he has been joining them regularly so as to give an impression that he would continue to join them in future also."<sup>24</sup>

**c) Vishvas v. State of Punjab<sup>25</sup>**

The case was before the High Court of Punjab and Haryana. In this case, the FIR was registered under sections 307, 376, 457, 511 IPC. The application of the petitioner was dismissed by both the Courts below only on the ground that the prosecutrix /complainant stated that she was attacked by the Juvenile and that he attempted to commit rape on her, and if released on bail, he would come in close proximity to her; and he may be exposed to psychological and moral danger, and his release would defeat the ends of Justice. However, it was held by the High Court that there was no material on the record to show that there were reasonable grounds for believing the petitioner was likely to come into the association of criminals if released on bail

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<sup>22</sup> Supra 20

<sup>23</sup> (P&H) 2019 (1) R.C.R. (Criminal) 526.

<sup>24</sup> *Happy v. State of Haryana*, Legitquest (August 3, 2021, 4:00 PM), <https://www.legitquest.com/case/happy-v-state-of-haryana/182E24>.

<sup>25</sup> CRR No. 53 of 2021 (O & M) decided on 08.02.2021

or his release would expose him to moral, physical or psychological danger. The order passed is found to be mechanical and without adhering to the provisions of section 12 (1) of the JJ Act, and the Juvenile was allowed bail. The order was directed to be circulated in the states of Punjab, Haryana and Chandigarh with further direction to assign reasons for declining the bail of Juvenile as per section 12 of the JJ Act.<sup>26</sup>

**d) Ajith Kumar v. the State of Madras<sup>27</sup>**

A number of petitions were taken together as a common question involved was “Whether JJ Boards shall consider the bail applications on merits on the same day of the surrender of juveniles?”

One case was under Sections 509, 153 (A) of the Indian Penal Code, 1860 and Section 67 (A) of the Information Technology Amendment Act, 2008, and the allegation against this petitioner were that he had made derogatory remarks about women of another community in the village, that would lead to communal violence. With such serious allegations, if the petitioner was released on bail on the same day, there was every possibility of an outbreak of communal violence in the village that would be detrimental to the petitioner’s interest. The petitioner also required counselling not to make such inflammatory statements and post them on his Facebook account.<sup>28</sup>

Another case was under Sections 341, 294 (b), 323, 307 and 506 (ii) of the Indian Penal Code, 1860, in which the victim was attacked with a knife. In this case, also, the Board should have assessed if there was any danger to the Juvenile or his release would defeat the ends of Justice. Though this court cannot issue directions under Section 482, the effect of which would be putting fetters on the power of the Board to conduct a complete and effective assessment of the Juvenile’s case for grant of bail.

It was held that a juvenile in conflict with the law is statutorily entitled to bail, even though one is involved in a non-bailable offence. The Juvenile Justice Boards in Tamil Nadu do not mechanically refuse bail in all cases. In serious offences like an attempt to murder, murder, et Cetera, there is a huge possibility of the victim party retaliating, and that may expose the Juvenile to “moral, physical or psychological danger.”

Whether in a given case, the Juvenile in conflict with the law will be exposed to “moral,

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<sup>26</sup> *P&H HC / A juvenile has to be released on bail mandatorily unless and until exceptions carved out in proviso to S. 12 (1) of J.J. Act, 2015 itself are made out*, SCC ONLINE (Aug. 4, 2021, 4:01 PM), <https://www.sconline.com/blog/post/2021/02/22/juvenile-justice-act/>.

<sup>27</sup> (Madurai Bench) 2016 (3) RCR (Cri.) 139.

<sup>28</sup> (August 3, 2021, 4:00 PM), <http://www.judgmenthck.kar.nic.in/judgmentsdsp/bitstream/123456789/36248/1/WP57887-14-19-12-2014.pdf>.

physical or psychological danger” is a fact that can be assessed only by the Board, where members are qualified to assess the circumstances. Therefore, the court should not give a blanket order in all the cases to the Juvenile Justice Board to release the Juvenile in conflict with the law on bail on the very same day of his production as such a direction will go contrary to the mandate of Section 12 (1) of the Old Act and the New Act.<sup>29</sup>

**e) Master Abhishek (Minor) v. State (Delhi).**<sup>30</sup>

In this case, the bail application of the Juvenile was dismissed by the JJ Board and the trial court. The Juvenile was apprehended for offences under sections 323, 302, 34 IPC. A social investigation report was submitted stating that the Juvenile was not arrested in any previous case; that the family was taking care of the juvenile property; that the ethical and religious values of the family are normal; that the relationship between the family members was healthy and there was no anti-social history of the family. It was further reported that as per the school record, he was a good student, having scored a scholarship in class VII and the circumstances leading to the offence were co-incidental.

The JJ Board rejected the application for bail by observing that the manner in which the Juvenile committed the crime reflects his aggressive behaviour, tendencies to harm others and the fact that the person assaulted only with his fist and arms shows his brutal mental makeup.

However, Delhi High Court, while referring to the aim and preamble of the Act, held that what can be said to be the factors to determine what will defeat the ends of Justice have to be located in the context of the purpose of the Act. The purpose of the Act is to meet the need for care and protection of children and to cater to their development needs. This can be done by adopting a child-friendly approach in the adjudication and disposing of matters in the best interest of children and for their ultimate rehabilitation.

Therefore, if there is a factor that requires the Court to keep the child in custody for meeting the developmental needs of the child or for his relation, or for his care and protection, then only it can be said that his release would defeat the ends of Justice. It was also held that if it is felt that if the child on release may commit the offence again, that would also be covered by phrase ‘defeat ends of justice’.

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<sup>29</sup> Apoorva Mandhani, *Court cannot issue a direction in breach of law however noble it may seem to appear*, Live Law (August 3, 2021, 4:00 PM), <https://www.livelaw.in/court-cannot-issue-a-direction-in-breach-of-law-however-noble-it-may-seem-to-appear-madras-hc-declined-to-issue-a-blanket-order-to-release-juveniles-on-same-day-of-surrender/>.

<sup>30</sup> 2005 VI AD Delhi 18

**f) Shimil Kumar v. the State of Haryana<sup>31</sup>**

The petitioner and his accomplices caused the death of Sheela Devi and severed her head and hand, which were subsequently recovered upon their disclosure statement. Her slippers and saree were recovered at the behest of the accused. The bail application of the petitioner was dismissed by the Board and Additional Sessions Judge. The High Court of Punjab and Haryana posed the following questions for deciding the bail application:

- (a) whether the inquiry to ascertain the juvenility of an accused should be centred only on the biological aspect as determinative of age?;
- (b) what sort of inquiry is the Board required to make, and what are the factors to be considered to determine the age of a juvenile? And
- (c) what forms the basis of an apprehension of a court that release of such a juvenile in conflict with the law would endanger his own well being by bringing him into contact with criminals or men of bad influence or even on the count of defeating the cause of Justice.

Answering these questions, it has been observed, “the word child connotes ‘one who is between birth and full growth. This would reflect upon the biological aspect. The word ‘childlike’ has been defined by Oxford as ‘credulous’, ‘foolish’, ‘immature’, ‘infantile’, ‘juvenile’, ‘naive’. When it is to be determined whether a person is juvenile, it would depend upon both his physical growth, which exemplifies adolescence, coupled with his behaviour because it is his conduct or grave misconduct that brought him in conflict with law and society. Declaration of the age of the child who is in conflict of law with merely relying upon a school leaving certificate or even a proof of a certificate of registration of birth ipso facto should not be the foundational basis to declare a person juvenile more particularly when such a juvenile is accused of having committed as heinous offence particularly when days or few months separated him from adulthood..... It has also been held that in cases of aggravated offences, what is of importance to establish whether a person is a child or not, is his ability to comprehend, what is right and what is wrong, what is lawful and what is unlawful and whether he understands the consequences of his actions. It is the advancement of his mental faculty that would suggest whether he is an adult or a juvenile, and for this purpose, there has to be a specialised examination of the child at the hands of the experts who can evaluate the ability of such a child to segregate good and bad, the lawful and unlawful and the consequence ensuing therefrom and this would show his maturity or immaturity to answer his deeds. .... Apart

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<sup>31</sup> Cr.Rev.No.303 of 2013 (O&M) decided on 29.01.2013.

from determining such abilities, an inquiry should also establish the social factors surrounding such a person in conflict with the law, as they possibly may reveal the cause of distorted or perverted mindset, which may eventually lead to an appreciation of the ability of correct comprehension. It can be achieved by involving a professional psychiatrist and sociologist. Thereafter the Board can proceed to determine the second aspect as to whether to release a juvenile on bail, which would depend upon the first question..... in cases where a juvenile has been accused of aggravated offences that shock the conscience of the society, it would be safer to protect him from collective wrath of a community or a society, on account of retribution such a dastardly act may possibly invite.”

**g) Amritpal Singh @ Nikku v. the State of Punjab<sup>32</sup>**

The High Court of Punjab and Haryana held that for invoking exception under Section 12 of the Act refusing the concession of bail to the Juvenile, there has to be some material before the competent authority on the basis of which, it can be held that the release of the Juvenile would fall within the exception recognised under Section 12 of the Act.<sup>33</sup>

**h) Ashish Masih @ Ashu v. State of Punjab<sup>34</sup>**

The High Court of Punjab and Haryana observed that Section 12 of the Juvenile Justice Act, 2015 makes it quite clear that the grant of bail to the child in conflict with the law be the norm and the proviso be that denial of such bail only when the release of the child is likely to bring the child into association with known criminals or expose one to psychological, moral, or physical danger or defeat the ends of Justice.<sup>35</sup> It was further held that the reason for rejection of the bail should not be a mechanical representation of the legal provision and mere lip service of the Board.

**i) Om Prakash v. State of Rajasthan and Anr.<sup>36</sup>**

Apex court has cautioned the courts to be more sensitive in dealing with Juvenile in cases of serious nature like sexual molestation, rape, gang rape, murder, drug trafficking etc. It observed as :

“The Juvenile Justice Act was enacted with a laudable object of providing a separate forum or

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<sup>32</sup> CRR-1103-2020 decided on 07.10.2020.

<sup>33</sup> *Whether the Board can deny bail to a juvenile on the ground of seriousness of offence?*, UNIQUE LEGAL DATABASE (Aug. 4, 2021, 5:00 PM), <https://www.lawweb.in/2020/07/whether-board-can-deny-bail-to-juvenile.html>.

<sup>34</sup> CRR-992-2020 decided on 13.07.2020.

<sup>35</sup> Mehal Jain, *Juvenile justice Act*, LIVE LAW (Aug. 4, 2021, 5:00 PM), <https://www.livelaw.in/news-updates/juvenile-justice-act-grant-of-bail-the-norm-says-ph-hc-159951>.

<sup>36</sup> (2012) 5 SCC 201.

a special court for holding trial of children / Juvenile by the juvenile court as it was felt that children become delinquent by force of circumstance and not by choice and hence they need to be treated with care and sensitivity while dealing and trying cases involving criminal offence .... But when an accused commits a grave and heinous offence and thereafter attempts to take statutory shelter under the guise of being a minor, a casual or cavalier approach while recording as to whether an accused is a juvenile or not can be permitted as the courts are enjoined upon to perform their duties with the object of protecting the confidence of common man in the institution entrusted with the administration of justice". Hence, while the courts must be sensitive in dealing with the Juvenile who is involved in cases of serious nature like sexual molestation, rape, gang rape, murder and a host of other offences, the accused cannot be allowed to abuse the statutory protection by attempting to prove himself as a minor."....'statutory protection of the Juvenile Justice Act is meant for minor who are innocent lawbreakers and not accused of mature mind who use the plea of minority as a ploy or shield to protect himself from the sentence of the offence committed by him, otherwise would amount to subverting the course of Justice. The Juvenile Justice Act, which is certainly meant to treat a child accused with care and sensitivity, offering him a chance to reform and settle into the mainstream of society, the same cannot be allowed to be used as a ploy to dupe the course of Justice while conducting trial and treatment of heinous offences. This would clearly be treated as an effort to weaken the justice dispensation system and hence cannot be encouraged."

**j) Suraj Gupta v. State of Uttar Pradesh<sup>37</sup>**

In the said case, the Hon'ble Allahabad High Court confirmed the rejection of bail of a juvenile in the case of Section 376 and Sections 3 and 4 of POCSO Act, 2012 on the ground that 'Juvenile in conflict with the law 'does not entitle one to be released on bail solely on the ground of one's juvenility, Juvenile offenders who have criminal tendencies and have inclination and attraction to commit a crime "at the drop of a hat", should be segregated and not be integrated to set the shield of this benevolent legislation. A liberal interpretation in matters related to ghastly crime would definitely result in defeating the ends of Justice.

In case of denial of bail by the Juvenile Justice Board, it shall make an order to send a person to the observation home or a place of safety for such period during the pendency of inquiry regarding the person as mentioned in the order.

**k) Master Bholu v. State of Haryana and Anr.<sup>38</sup>**

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<sup>37</sup> (Allahabad) 2018 (102) ACrC 220.

<sup>38</sup> CRR No. 3838 of 2018 (O & M) decided on 30.06.2020.

The Hon'ble Punjab and Haryana High Court, in the aforementioned case, upheld the orders of rejection of bail by the Board as well as the Sessions Court. The Board and the Sessions Court dismissed the bail application of a juvenile on the ground that the chain of events set out in the final report under Section 123 Cr.P.C. makes a very strong case in favour of prosecution to the effect that the manner of the commission of the alleged murder of seven years of a child does not warrant the release of Juvenile on the bail as it would result in defeating the ends of Justice. Relying upon the facts of the case along with medical evidence, CCTV footage and social investigation report, it was held that the provisions of the Act could not be interpreted only for the benefit of the Juvenile, ignoring the cries of the victim child. By showing misplaced sympathy to Juvenile who has perpetrated offence like murder, victim and society is denied Justice which is not and cannot be the intention of the law. In this regard, reliance was placed upon case law titled *Virendra v. State of Uttar Pradesh*.<sup>39</sup>

From the provision of Section 12 of the Juvenile Justice Act, 2015, it is explicit that the intention of the Legislature is to grant bail to the Juvenile irrespective of the nature or gravity of the offence alleged to have been committed by the child, and the bail can be declined only in cases where reasonable grounds are present for believing that the release is likely to bring the Juvenile into the association of any known criminal or expose the child to psychological, moral, or physical danger, or that the release would defeat the ends of Justice. Therefore, a juvenile can be denied the concession of bail if any of the three contingencies specified under Section 12 (1) of the Juvenile Justice Act, 2015 is available.<sup>40</sup>

**(A) Section 12 of JJ Act, 2015 has an overriding effect on Section 37 of NDPS Act, 1985**

**Sumanta Bindhani v. the State of Orissa<sup>41</sup>**

In the above case, there was the recovery of 'Ganja'; the Hon'ble Orissa High Court held that Section 12 of the JJ Act, 2015 overrides the provisions mentioned under Section 37 of the JJ Act, 2015 in the case of a person who is juvenile and who is allowed bail by observing that Legislature has provided for the Juvenile to the extended special care, treatment, development and rehabilitation and that there was no material that while on bail the petitioner is likely to come in association with any known criminal or will be exposed to psychological, moral, or physical danger or Juvenile's release would defeat the ends of Justice.

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<sup>39</sup> CCR No. 345 of 2011 decided on 30.04.2014.

<sup>40</sup> *P&H HC | A juvenile has to be released on bail mandatorily unless and until exceptions carved out in proviso to S. 12 (1) of J.J. Act, 2015 itself are made out*, SCC ONLINE (Aug. 4, 2021, 5:00 PM), <https://www.sconline.com/blog/post/2021/02/22/juvenile-justice-act/>.

<sup>41</sup> (Orissa) 2017 (3) Crimes 582.

## **VI. SOCIAL INVESTIGATION REPORT**

The Juvenile Justice Board is incumbent to call for a Social Investigation Report, which has been defined in Rule 2 (xvii) of the Juvenile Justice (Care and Protection of Children) Model Rules, 2016. The aim of this provision is to enable the Board to have a flashback in the social circumstances of the child, before any order regarding bail or of any other nature is passed.

The report has three parts;

The first part requires the Probation Officer to give the data or information regarding the close relatives in the family, delinquency records of the family, social and economic status, ethical Code of the family, attitude towards religion, the relationship amongst the family members, relationship with the parents, living conditions etc.

Thereafter, the report requires the Probation Officer to provide the child's history regarding his mental condition, physical condition, habits, interests, personality traits, neighbourhood, neighbours' report and school, employment, if any, friends, the child is subject to any form of abuse, circumstances of apprehension of the child, mental condition of the child.

The most important part of the report is the third part, i.e. the result of inquiry where the Probation Officer is required to inform the Board about the emotional factors, physical condition, intelligence, social and economic factors, suggestive cause of the problems, analysis of the case including reasons/contributing factors for the offence, opinion of experts consulted and recommendation regarding rehabilitation by the Probation Officer/ Child Welfare Officer.

The main focus of the report is to identify conditions in which juvenile delinquent resides, his financial condition, social and economic status of the family, the inter se relations of the family members, his physical and mental conditions etc. and understand the circumstances that may have led to the alleged crime. Against this backdrop, the report would help the Board to come to a decision as to whether there are any grounds for denying bail, as per the proviso to Section 12 (1) of the JJ Act, 2015. Therefore, it is incumbent upon the Board to take into consideration the Social Investigation Report and make an assessment of the reasonable grounds for declining the bail application of the Juvenile.<sup>42</sup>

The Social Investigation Report is not for discovering evidence, but the focus of the report is to identify and understand the circumstances of the child in question and what may have led to the alleged crime. It will enable the Board to reach the decision if there are grounds to deny bail, and thus, it is incumbent upon the Board to take the report into consideration and make an

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<sup>42</sup> Supra 40.



objective assessment of the reasonable grounds for rejecting the bail application of the Juvenile.<sup>43</sup>

## VII. REMEDY ON THE REJECTION OF BAIL OF JUVENILE BY THE BOARD

**Section 101** deals with the provision of **Appeals** and stipulates that subject to the provisions of the JJ Act, 2015, any person who is aggrieved by an order made by the Committee or the Juvenile Justice Board under the Juvenile Justice Act, 2015 may, within 30 days from the date of such order, prefer an appeal to the Children's Court, except for the decisions by the Committee that are related to Foster Care and Sponsorship After Care for which the appeal shall lie with the District Magistrate. There is a proviso to the said situation that the Court of Sessions, or the District Magistrate, as the case may be, may entertain the appeal after the expiry of 30 days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time and such appeal be decided within a period of 30 days.

Thereafter, no second appeal shall lie from any order of the Court of Session, passed in appeal under the said Section, and any person who is aggrieved by order of the Children's Court may file an appeal before the Hon'ble High Court as mentioned in the Cr.P.C.<sup>44</sup>

**Section 102** deals with the **Revision** and states that the Hon'ble High Court may, at any time, either on its own motion or on an application received in this behalf, call for the record of any proceeding in which any Committee or Board or Children's Court, or the Court has passed an order, for the sole purpose of satisfying itself as to the legality or propriety of any such order and may thereafter pass such an order in relation thereto as it thinks fit. It further provides an exception that the High Court shall not pass an order under the said Section prejudicial to any person without giving him a reasonable opportunity of being heard or following the principle of Audi alteram partem.<sup>45</sup>

## VIII. FORUM WHERE THE BAIL APPLICATION LIES WHEN BOARD DECIDES THAT THE JUVENILE IS TO BE TRIED AS AN ADULT AND TRANSFERS THE CASE TO THE CHILDREN'S COURT

In *Radhika (Juvenile) v. State of Uttar Pradesh*<sup>46</sup>, the Hon'ble Allahabad High Court took the bunch matters together to answer the questions what would be the forum of considering the bail of delinquent Juvenile under the scheme of the Act and what would be the factors applied

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<sup>43</sup> Supra 24

<sup>44</sup> Juvenile Justice (Care and Protection of Children) Act, 2015.

<sup>45</sup> Supra 42.

<sup>46</sup> Criminal Appeal No. 4418 of 2019 decided on 05.08.2019.

by the court below while releasing them on bail/ appeal/ revision with regard to delinquent juveniles within the age group of 16 to 18 years.

In all the appeals, the Juvenile was held by the Board to be tried as an adult, and the cases were transferred to Children Court/ Special Judge POCSO Act where bail applications were moved, and the same was rejected by the Special Judge, POCSO Act/ Children Courts and appeals were filed before Hon'ble High Court. In this eventuality, it was held that if the bail application of a juvenile delinquent is refused under Section 12 of the Act, as per scheme of the Juvenile Justice Act, 2015, its remedy lies under Section 101 (1) of the Act, which states that any person who is aggrieved by an order made by the Committee or the Juvenile Justice Board under the said Act may, within 30 days from the date of order, prefer an appeal, to the children's court except for decision by the Committee related to foster care and sponsorship after for which the appeal shall lie with the District Magistrate.<sup>47</sup> Thus, there is the provision of appeal, subject to the provision of this Act, any person aggrieved by the Committee or the Board under this Act may, within 30 days of such order, prefers an appeal to the court of Sessions. However, in the said matters before the Hon'ble High Court, after getting their respective bail applications rejected by Special Judge (POCSO Act), the appellant straight away approached the High Court under Section 101 (5) of the Act. It was observed that this is not mandated under law, nor permissible under the scheme of the Act because the appeal would lie only in the court of Sessions and as per the provision of Section 101 (1) of the Act, the Sessions Courts are not empowered to hear the appeals after the bail of delinquent Juvenile is rejected by Special Judge (POCSO Act), who in fact, is an officer of the rank of Additional Sessions Judge of the same Sessions Division.

The said appellate order passed by the learned Sessions Judge could be challenged before the High Court under Section 102 of the Act whereby it has empowered High Court with revisional power either on its own motion or an application received in this behalf and it can call for the record of any proceeding in which any Committee or Juvenile Justice Board or Children's Court or the court has passed an order for the purposes of satisfying itself as to the legality or propriety of any such order in relation thereto as it thinks fit.<sup>48</sup>

Thus, the scheme of the Act of 2015 for consideration of bail application of delinquent Juvenile clearly lays down a particular procedure, and there cannot be any justification for its deviation. In the matter before the High Court, after being declared Juvenile by the Board, the delinquent

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<sup>47</sup> Juvenile Justice (Care and Protection of Children) Act, 2015.

<sup>48</sup> Supra 45.

offenders applied for regular bail before Special Judge (POCSO Act) acting as Children's Court who rejected their respective bail applications, and after that, all the appellants moved the appeals before the High Court under Section 101 (5) of the Act which is clearly violative of the scheme of the Act and thus were held to be not sustainable, and the appellants were directed to approach for bail under Section 12 of the Act with the direction to the Board to decide the same within 7 days from its institution as per the mandate of law under Section 12 (4) of the Act.

In *Vicky v. State of Uttar Pradesh*<sup>49</sup>, a question was answered by the Punjab & Haryana High Court to the effect of whether a child in conflict with the law which is being tried as an adult for the purpose of trial u/s 18 (3) of the JJ Act, could maintain an application for grant of regular bail u/s 12 of the JJ Act or u/s 439 of Cr. PC before the Children's Court and the High Court. While answering the question, Section 12 of the JJ Act has been discussed, and it has been observed that the JJ Act is silent and does not differentiate between bail being allowed to a juvenile who is alleged to be involved in a petty offence, serious offence, or a heinous one or between a juvenile who is being tried as an adult before the Children's Court. It has further been observed that the Board does not become functus officio once the matter has been transferred to the Children's Court since there is no other provision under the JJ Act for deciding the question of bail. Section 8 (2) of the JJ Act permits the High Court and the Children's Court to exercise powers conferred upon the Board when the proceedings come before them u/s 19 or in appeal, Revision, or otherwise. The functions and the responsibilities of the Board are detailed in Section 8 (3) (a) to (n), and these are silent on the question of entertaining bail. The term 'otherwise' cannot be read as a power to entertain an application u/s 438 Cr.P.C., which would then render Section 12 of the JJ Act meaningless. Looked from another angle, in case an application for bail is filed before the Children's Court u/s 439 Cr.P.C., would the application be decided within those parameters which are discretionary in nature or following the provisions of Section 12 of the JJ Act, which clearly specifies that bail should be allowed to a juvenile, notwithstanding the provisions of Cr.P.C. or any other law for the time being in force. Bail may be rejected u/s 439 Cr.P.C. Keeping in mind the gravity and the heinousness of the offence committed, whereas the gravity of the offence shall not be a consideration when the JJ Board is deciding the question of bail. However, it can reject bail under Section 12 of the JJ Act only under such three circumstances as mentioned in the proviso and not beyond that. The provisions for the grant of bail under the JJ Act and u/s 439 Cr.P.C. are inconsistent with each other. Keeping in view the Special Act where the main objective is

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<sup>49</sup> Chandigarh CRM-M-21388 of 2020 (O & M) decided on 31.08.2020.

to rehabilitate a juvenile, Section 12 regarding grant of bail was incorporated in the JJ Act, rather than following the procedure u/s 439 Cr.P.C., where there is every possibility of continued jail term on denial of bail. Once a procedure is prescribed within the JJ Act for grant of bail, there can be no cogent reason for deviating from the same. Hence, it has been held that an application for grant of bail to a child apprehended or detained by the police will be entertained by the JJ Board u/s 12 of the JJ Act and an application u/s 439 Cr.P.C. before the children's court will not be maintainable.

## IX. ANTICIPATORY BAIL TO JUVENILE

The general position of law to anticipatory bail is a settled one, and the position regarding its applicability in the case of juveniles or children in conflict with the law is in a state of flux. Due to the absence of an authoritative pronouncement by the Apex Court on the said issue, different benches of various Hon'ble High Courts have taken conflicting views and supported them with their own reasoning.<sup>50</sup> These views can be broadly divided into two categories:

- (i) Literal approach
- (ii) Purposive approach

### (A) Literal Approach

In *K. Vignesh v. State rep by The Inspector of Police*<sup>51</sup>, a Division Bench of the Madras High Court had occasion to examine the scope and ambit of the bail provisions in the said Act and to determine whether an application for anticipatory bail is maintainable at the instance of a child in conflict with the law. The Court, therefore, held that the Legislature consciously did not empower the police to arrest a child in conflict with the law and thus, it is manifestly clear that an application seeking anticipatory bail under Section 438 of the Cr.P.C. at the instance of a child in conflict with the law is not at all maintainable. The Court further laid emphasis upon the fact that Section 10 of the Juvenile Justice Act, 2015 provides for apprehending a child in conflict with the law by the police and not for arresting him. The court has taken the view that the JJ Act does not provide for the arrest of a child in conflict with the law by the police, and in the absence of any arrest, no question of invoking the provision contained in Section 438 of the Cr.P.C. Arises. Thus, the Court held that since a child in conflict with the law cannot be arrested, the Juvenile does not need to apply for anticipatory bail.

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<sup>50</sup> Shantanu Pachauri, *Anticipatory Bail and Children in Conflict with Law*, THE CRIMINAL LAW BLOG (Aug. 6, 2021, 11:30 AM), <https://criminallawstudiesnluj.wordpress.com/2020/06/07/anticipatory-bail-and-children-in-conflict-with-law/>.

<sup>51</sup> 2017 (1) LW (Cri) 878.

The High Court of Madhya Pradesh, in a case titled *Kamlesh Gurjar v. State of Madhya Pradesh*,<sup>52</sup> has opined that the Juvenile is not entitled to move an application under Section 438 of Code of Criminal Procedure for anticipatory bail, and only the JJ Board has sole authority to exercise the powers pertaining to the juveniles under the scheme of the Code of Criminal procedure, therefore, excluding the jurisdiction of the High Court or the Sessions Court. In the said case, the bench denied anticipatory bail to a Juvenile accused of committing an offence under Section 307 read with Section 34 of the IPC, on the basis of three broad principles:

- (i) The bail application of a Juvenile under Section 12 can be entertained only by the Juvenile Justice Board when one is apprehended or detained by the police or appears or brought before a Juvenile Justice Board and not by the High Court or Court of Sessions.
- (ii) As per the provisions of the Juvenile Justice Act, the powers vested upon the Juvenile Justice Board can be exercised by the High Court and the Court of Sessions only in matters pertaining to appeal, Revision or otherwise but not under Section 438 of the Code of Criminal Procedure, which provides for the anticipatory bail.
- (iii) The only provision dealing with the bail to juveniles is Section 12 of the Juvenile Justice Act, 2015, which does not provide for anticipatory bail to the Juveniles and thereafter, the Legislature does not intend to provide for anticipatory bail to the Juveniles. Moreover, no provision in the Code of Criminal Procedure enables the Juvenile to move an application for anticipatory bail either before the Court of Sessions or High Court or even before the JJ Board.

### **(B) Purposive approach**

#### **a) X (Prashob) v. the State of Kerala<sup>53</sup>**

The Kerala High Court held that there was no provision in the Juvenile Justice Act, 2015, which either expressly or by necessary implication excluded the applicability of Section 438 of the Cr.P.C., which provides for the grant of anticipatory bail. The Juvenile Justice Act, 2015 does not contain any specific provision dealing with the grant of anticipatory bail to a child in conflict with the law. Where no specific provision is made under the Act with respect to any particular matter, the provision contained in the Code in that regard shall be applicable. The Juvenile Justice Act, 2015 does not contain any provision which excludes the general application of the provisions of the Cr.P.C. as such. Wherever the legislation intended to give

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<sup>52</sup> 10345 of 2019 decided on 20 March 2019.

<sup>53</sup> (Kerala) 2018 (3) RCR (Cri.) 327.

overriding effect to the statutory scheme of the Juvenile Justice Act, 2015 over the provisions of the general application contained in the Cr.P.C., it has been specifically provided so. Application for anticipatory bail at the instance of a child in conflict with law is maintainable before the High Court or Court of Session.

With regard to the interpretation of the provisions of the Juvenile Justice Act, 2015 generally and Section 12 of the JJ Act, it was an established principle in the law that in case of conflict or inconsistency between the general and the special legislation, the provisions of the special law prevail to the extent of that inconsistency. However, where there was no inconsistency and the general legislation provides that is not prescribed by the special legislation, the provisions of general legislation would prevail. In *Sudhir Sharma v. the State of Chattisgarh*<sup>54</sup>, a Division Bench of Chattisgarh High Court held that there was no warrant for the conclusion that the non-obstante clause contained in Section 12 of the Juvenile Justice Act, 2015 excludes the availability of the remedy of applying for a grant of anticipatory bail by a CICL, who is apprehending his arrest on the accusation of commission of any offence. The only provision for grant of bail as contained under Section 12 of the Juvenile Justice Act, which deals with the application for grant of bail by a CICL, applies when he is apprehended or detained by the police or appears or brought before the Juvenile Justice Board on the allegation of having committed a bailable or non-bailable offence.<sup>55</sup> The statutory scheme of Section 12 of the Act mandates grant of bail to a CICL by use of the word “shall” unless there appear reasonable grounds for believing that the release is likely to bring the CICL in association with known criminal or to expose such person to psychological, mental, or physical danger or his release would defeat the ends of Justice. The provision deals with the case of a child differently from any other person who is not a child. Unless the three exceptional grounds are made out for rejection of application for grant of bail, CICL has to be granted bail irrespective of nature and gravity of allegations against him. It has been observed that how the beneficial provision for grant of bail to CICL could be interpreted to the utter prejudice of a CICL to say that he would not be entitled to say that important statutory scheme of seeking anticipatory bail provided under Section 438 of the Cr.P.C. On rational construction of the non-obstante clause in Section 12, it only seeks to put a CICL in a better position as compared to any other person who is not a CICL by providing that ordinarily a CICL has to be granted bail and it could be rejected upon the existence of three specified grounds exhaustively enumerated in the provision itself. There

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<sup>54</sup> MCRCR no. 549 of 2016 decided on 3rd March 2017.

<sup>55</sup> Akanksha Jain, *Child in conflict with law can apply for anticipatory bail u/s 438 CrPC*, LIVE LAW (Aug. 6, 2021, 11:40 AM), <https://www.livelaw.in/child-in-conflict-with-law-can-apply-for-anticipatory-bail-u-s-438-crpc-sec-12-1-jj-act-not-a-bar-high-court-of-kerala/>.

is no justification for giving non-obstante of such a wide amplitude as to exclude the statutory remedy of applying for anticipatory bail by a CICL”.

At this juncture, it is to be noticed that in the case of *Gopakumar v. the State of Kerala*<sup>56</sup>, the Kerala High Court, while considering the provisions contained in the 2000 Act held that a juvenile in conflict with the law apprehending arrest in a non-bailable offence, will be entitled to seek the discretionary relief of pre-arrest bail envisaged under Section 438 of the Cr.P.C. because that Section takes within its ambit ‘any person’ who seeks such relief when he has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence. An application for anticipatory bail under Section 438 of the Cr.P.C. at the instance of a child in conflict with the law is maintainable before the Hon’ble High Court or the Court of Sessions.

Moreover, it was observed that while granting anticipatory bail to a child who is in conflict with the law, the Court shall not impose conditions that are violative of or not in conformity with the provisions of the Juvenile Justice Act. The Court shall not impose conditions that are against the object and spirit of the Act. For example, the Court shall not direct the child in conflict with the law to appear in the police station.

**b) Krishan Kumar Minor through his Mother v. the State of Haryana**<sup>57</sup>

The Punjab & Haryana High Court held on 24th of July 2020 that a petition for grant of pre-arrest bail is est Anticipatory Bail by a juvenile “cannot be held to be not maintainable.”<sup>58</sup>

JJ Act is a piece of social welfare legislation that was enacted in order to take care of the welfare of the children and to avoid their turning into hardened criminals. The aim of this legislation was to ensure that a child who is under the age of eighteen who is in conflict with the law by committing an offence is said to be tried in a manner and under such environment, which may take him to the path of reformation rather than allowing such children to mix up with criminals in the jail and themselves turning into hardened criminals. This is the purpose of putting the Juvenile in conflict with the law, in the separate observation homes rather than in normal jail. Even if a juvenile in conflict with law is found to have committed some offence, then instead of awarding deterrent punishment, his rehabilitation and social integration are sought.<sup>59</sup>

Suppose this special enactment is silent as regards a particular provision, then that has to be

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<sup>56</sup> 2013 (1) RCR (Cri) 809.

<sup>57</sup> [CRM-M-19907-2020].

<sup>58</sup> Sparsh Upadhyay, *The Legislature didn't intend to debar a juvenile from seeking relief of pre arrest bail*, LIVE LAW (Aug. 6, 2021, 11:45 AM), <https://www.livelaw.in/news-updates/the-legislature-didnt-intend-to-debar-a-juvenile-from-seeking-relief-of-pre-arrest-bail-punjab-haryana-hc-160519>

<sup>59</sup> Juvenile Justice (Care and Protection of Children) Act, 2015.

read with the general law id est Cr.P.C. An inference can certainly be not drawn that the Legislature intended to debar a juvenile from seeking relief of anticipatory bail.<sup>60</sup>

If it was, then a specific provision in that regard would have been there on the analogy of Section 18 The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, which clearly bars grant of anticipatory bail to a person who is alleged to have committed an offence under the said Act.

Even otherwise, the JJ Act, 2015 provides that children below the age of eighteen years come within the definition of Juvenile be treated with kindness and compassion even if they are found in conflict with the law. It is not the intention of the Legislature that such Juvenile should be first apprehended and then produced before the JJ Board, in the process denying relief to a juvenile, which is available to the other persons, who are accused of heinous offences.<sup>61</sup>

Section 12 (1) of the Juvenile Justice Act, 2015 deals with a situation where a child in conflict with the law has been apprehended or detained by the police and is brought before the Juvenile Justice Board. Its limitation is that it comes into play when the child in conflict with the law has been apprehended. This provision does not deal with a situation before the apprehension or detention of a child in conflict with the law by the police or one's appearance or production before the Juvenile Justice Board. Therefore, the provision contained in Section 12 (1) of the Juvenile Justice Act does not take away the jurisdiction of the High Court or the Court of Sessions of granting anticipatory bail under Section 438 of the Code of Criminal Procedure, which by implication is to be exercised before Section 12 (1) comes into play. Therefore, the expression "notwithstanding anything contained in the Cr.P.C." in Section 12 (1) of the Juvenile Justice Act, 2015 is applicable in granting of bail to a child who is alleged to be in conflict with the law after one's apprehension or detention by the police or appearance or production before the Juvenile Justice Board.<sup>62</sup>

## **X. CONCLUSION**

Thus, from the various case laws discussed above, it can be crystalised that the interpretation of conditions "that his release might bring him into association with any known criminals" and "juvenile's release is likely to expose the juvenile to any psychological, moral, or physical danger" cannot be attracted when a delinquent juvenile has joined a known criminal/s only in

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<sup>60</sup> Ibid.

<sup>61</sup> Ibid.

<sup>62</sup> Himanshu Kr. Chaudhary & Anubhav Bijalwan, *Anticipatory Bail and Juveniles : An Ambiguous Tale*, LIVE LAW (Aug. 6, 2021, 11:30 AM), <https://www.livelaw.in/columns/anticipatory-bail-and-juveniles-an-ambiguous-tale-145873>.



a single case. There can be apprehension of his associating with known criminal/s only when there is sufficient evidence may be in the form of a Special Investigation Report to show that he has been joining the criminal/s regularly so as to give an impression that he would continue to join them in future also and the prosecution must identify the known criminals. It is not subjective satisfaction but an objective assessment of the reasonable grounds. The third exception, “juvenile’s release would defeat the ends of justice”, has been evolved to the effect that a delinquent juvenile who has criminal tendencies and has inclination and attraction to commit a crime “at the drop of a hat” should not be granted bail solely on the ground of juvenility and the legislation should not be used as a shield in such like cases. Rather, a liberal interpretation in matters relating to ghastly crime would result in defeating the ends of Justice. If the Board considers that the circumstances require to keep the child in custody for meeting the developmental needs of the child or for his care and protection, then only it can be said that his release would defeat the ends of Justice.

Thus, for invoking any of the exceptions u/s 12 of the Act refusing the concession of bail to the Juvenile, there has to be some material before the competent authority to form the basis of the said order. The reason for rejection of the bail should not be a mechanical representation of the legal provision and mere lip service of the Board.<sup>63</sup> The decision of the Board should be based on the material on the file and not mere apprehensions.

Since law regarding Juvenile is of beneficial nature and socially oriented legislation, the Juvenile Law strives to achieve explicit social goals such as the provision of minimum standards of cases. The law relating to Juvenile also functions to safeguard the rights of children as per the United Nations Declaration of the Rights of Child. Bail is the norm, and judicial detention is an exception for Juveniles in conflict with the law. In the backdrop of the aforementioned discussion, it is candid that Juveniles have a statutory right to obtain regular as well as anticipatory bail. A juvenile can be denied bail only for strong reasons, as envisaged in the provisions of the JJ Act. The Juvenile Justice Law is based upon the notion of restorative justice and gives paramount consideration to the best interest of the child.

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<sup>63</sup> CRR-992-2020 decided on 13.07.2020.