

Allahabad High Court  
Radhika (Juvenile) vs State Of U.P. on 5 August, 2019  
Bench: Rahul Chaturvedi

HIGH COURT OF JUDICATURE AT ALLAHABAD

Reserved on 10.07.2019

Delivered on 05.08.2019

A.F.R.

Court No.67

(i) Case:- CRIMINAL APPEAL No. 4418 of 2019.

Appellant :- Radhika (Juvenile)

Respondent:- State of U.P.

Counsel for the Appellant:- Gaurav Tripathi,

Anurag Vajpeyi.

Counsel for Respondent: G.A.

WITH

Case: CRIMINAL APPEAL NO. 4420 OF 2019

Appellant: Himanshu Alias Dabhu

Respondent:- State of U.P. And Another.

Counsel for Appellant Amit Mishra.

Counsel for Respondent G.A.

WITH

Case: CRIMINAL APPEAL NO. 4518 OF 2019

Appellant Aman  
Respondent: State of U.P. And Another.  
Counsel for Appellant Ram Jee Saxena, Raghuvansh  
Chandra.  
Counsel for Respondent- G.A.

(ii) Case: CRIMINAL APPEAL NO. 4467 OF 2019

Appellant: Raju Alias Raj Kumar.  
Respondent: State of U.P. And Another.  
Counsel for Appellant Bhanu Prakash Verma.  
Counsel for Respondent G.A.

(iii) Case: CRIMINAL APPEAL NO. 2702 OF 2019

Appellant Aqil (Juvenile)  
Respondent State of U.P. And Another.  
Counsel for Appellant Pankaj Satsangi, Kamal Kishor  
Mishra  
Counsel for Respondent G.A.

(iv) Case: CRIMINAL MISC. BAIL APPLICATION NO. 38818 of 2018

Applicant- Prince @ Aditya Tiwari  
Opposite Party- State of U.P.  
Counsel for Applicant- Sanjay Chaturvedi, Dharmendra

Shivendra Raj Singhal.

Counsel for Opposite Party:-G.A. Kameshwar Singh, Nilam

Hon'ble Rahul Chaturvedi J.

[1] Heard Sri Dharmendra Singhal, learned Senior Counsel, S/Sri Sanjay Chaturvedi

[2] Questions of law recurring in all the aforesaid appeals are as under:-

(i) As to whether the aforesaid appeals are maintainable under Section 101(5) of Juvenile Justice Act, 2015.

(ii) Ancillary to the aforementioned prime question, the court is also asked to consider the following question:-

[3] Since the malady of all these appeals arose out the fact that the concerned appellants are aggrieved by the order of the Children's Court under

"101(5) - Any person aggrieved by an order of the Children's Court may file an appeal before the Sessions Judge or the District Judge, as the case may be, within a period of 30 days from the date of the order.".

[4] Since common question of law is involved with regard to maintainability of the appeals, it is necessary to consider the same together.

[5] Before coming to the legal aspect of the issue, it is imperative to spell out the facts of the case.

#### FACTS

#### OF THE RESPECTIVE APPEALS

(a) APPEAL No. 4418 of 2019 Radhika (Juvenile) The instant appeal has been filed against the order dated 12.06.2019 passed by Additional Sessions Judge/FTC Court, Etawah while rejecting the Bail Application no. 1096/2018-19 arising out of Case Crime No. 223/2018 U/s 498A, 304B I.P.C. and U/s 3/4 D.P. Act, Police Station Chaubiya District Etawah. The appellant Radhika is one of the named accused of the FIR lodged by Rakesh Kumar for the alleged act of bride burning of Ms. Jyoti. The deceased was married just 6 months back and in her dying declaration, she has attributed the role of pouring kerosene oil on her to the appellant when she was alive and as per the opinion of the doctor she took her last breath on account of 95% burn injuries. After holding an extensive investigation, the police has submitted charge sheet U/s 498A, 304B I.P.C. and U/s 3/4 Dowry Prohibition Act against all the named accused persons including the appellant Ms. Jyoti.

Since the appellant claims juvenility and after holding a preliminary assessment in this regard, her case was segregated as a juvenile and Juvenile Justice Board, Etawah vide its order dated 22.2.19 pursuant to Section 15(1) of the Juvenile Justice Act, 2015 have adjudicated after assessing her age related document that the alleged delinquent offender is above 16 years of the age at the time of incident and according to preliminary assessment with regard to her mental and physical capacity, she was quite intelligent and has sufficient ability to understand the far reaching consequences of her conduct in commission of crime (Assessment order by the Board dated 22.2.19/Annexure No. 14

to the affidavit). After holding the assessment, the Board has passed an order that there is need of trial of said child as an adult and transferred the case to Children Court/Special Judge, POCSO Act, Etawah, where bail application was moved on behalf of the appellant and the same was rejected by Special Judge, POCSO Act, Etawah. Hence the appeal U/s 101(5) of Juvenile Justice Act, 2015 before this Court.

(b) APPEAL NO. 4420 OF 2019 (Himanshu Alias Dabhu) Instant appeal was filed against order dated 16.05.2019 whereby the Incharge Special Judge, POCSO Act, Kanpur Nagar has rejected the bail application No. 1288/2019 arising out of Case Crime No. 46/2019 U/s 394, 411 I.P.C. Police Station Bithoor, District Kanpur Nagar. An FIR was registered by one Anurag Yadav against 3 unknown persons for the alleged robbery of Rs. 4.45 lacs and during investigation, the complicity of the appellant was surfaced in the commission of offence.

The appellant claimed juvenility. The Juvenile Justice Board after assessing his age related documents/High School Certificate, 2016 in which his date of birth is 15.04.2001 and thus on the date of incident dated 03.02.2019 he was above 16 years (17 years, 9 months and 16 days to be precise) and has declared juvenile and the Board after conducting his preliminary assessment, as per provision of Section 15(1) of the Act, he understands the consequences of his offence remitted the case to Children's Court/Special Judge, POCSO Act pursuant to Section 18(3) of Juvenile Justice Board having jurisdiction to try such delinquent offender as an adult. The appellant Himanshu @ Dabhu has moved bail application before the court concern and the learned Special Judge has rejected the bail vide order dated 16.5.2019. Hence this appeal U/s 101(5) of Juvenile Justice Act.

(c) APPEAL NO. 4467 OF 2019 (Raju Alias Raj Kumar) Present appeal has been filed against the bail rejection order dated 21.06.2019 whereby Special Judge, POCSO Act has rejected the bail application of the appellant bearing No. 1735/2019 arising out of Case Crime No. 313/2018 U/s 147, 302, 201, 34 I.P.C. Police Station Shergarh, District Mathura. The FIR came into existence by one Shri Makhan, who lodged the present FIR on 23.09.2018 for the incident said to have taken place on 18.09.2018 naming as many as 7 persons including the appellant. Contended by the counsel that the case hinges upon last scene and circumstantial evidence.

The appellant claims juvenility and the Juvenile Justice Board Mathura vide order dated 22.05.2019 after threshing his document and other material on record, has hold that the age of delinquent on the date of incident was 17 years, 7 months and 8 days. Thereafter, the Board in his preliminary assessment, pursuant to the mandate of Section 15 of the Act, vide order dated 29.05.2019 has mentioned that since the delinquent is 16(+) years of age, he understands the consequences of his conduct and should be tried like an adult and thus remitted the matter to the Children Court/Special Court POCSO Act for the said purpose. The learned Sessions Judge, after taking into account the assessment report by Juvenile Justice Board and the report of the District Probation Officer in response to his bail application has rejected it on 21.06.2019. Hence the Appeal U/s 101(5) of the Juvenile Justice Act.

(d) APPEAL NO. 2702 OF 2019 Aqil (Juvenile) Aggrieved by the order, rejecting the bail application no. 2019/2018 of the appellant dated 04.07.2018 whereby Addl. Sessions Judge/Special Judge,

POCSO Act, Budaun rejected the bail arising out of Case Crime No. 304/2017 U/s 376D and Section 5/6 of POCSO Act. The genesis of the case starts from lodging of the FIR from one Eikta Devi (the victim herself) on 9.10.2017 for the alleged incident of gang rape upon her by Wahid, Aqil (the appellant) and Latoori. In this incident the accused/appellant intercepted her and thereafter stuffing her mouth, committed gang rape upon her one by one. In 161 and 164 Cr.P.C. statements, she has attributed role of gang rape upon her by all the 3 accused persons whereby in 164 Cr.P.C. statement, she has reiterated the story mentioned in 161 Cr.P.C. statement.

The delinquent Aquil claimed juvenility and in the report of Juvenile Justice Board, Budaun annexed as Annexure No.1 to the affidavit dated 9.1.18, the board has determined his age on the date of incident as 16 years, 3 months and 8 days (less than 18 years) and was declared as Juvenile. Not only this, in the assessment report, the board hold that the juvenile understands the repercussions of his action and is quite intelligent, and thus remitted the matter to Children Court as per the mandate of law as per Section 18(3) of Juvenile Justice Act. It is also borne out from the bail rejection itself that as per the report of C.M.O. Budaun, the age of prosecutrix is barely 13 years and all the named 3 accused persons have physically assaulted her and thereafter ravished her. The bail application was moved and was rejected by Special Judge, POCSO Act, Budaun. Hence the appeal U/s 101(5) of Juvenile Justice Act, before this Court.

(e) APPEAL NO. 4518 OF 2019 (Aman) This appeal is being filed after getting the bail application No. 2438/2019 rejected by Special Judge, POCSO Act, Meerut arising out of Case Crime No. 787/2018 U/s 377, 506 IPC and 3/4 POCSO Act. Kundan Singh has lodged FIR at P.S. Nauchandi Meerut against the appellant Aman, with the allegation that Chhotu and Aman (appellant) have committed unnatural sex/sodomy with one Harsh on 1.2.18. The age of victim Harsh was barely 10 years.

The appellant Aman has claimed juvenility and his claim was examined by Juvenile Justice Board who vide order dated 30.3.19 have found that on the date of incident, the delinquent was 16 years, 10 months and 4 days (less than 18 years). Besides this, the Juvenile Justice Board conducted a preliminary assessment of the delinquent in pursuant to Section 15(1) of J.J. Act and he was put before Dr. Bhagat Singh, Psychologist, who opined that the delinquent/juvenile is mentally mature boy and understands result of the conduct and taking into account the Psychologist report and report of District Probation Officer, Meerut, the records of the case was transmitted to Children Court/Special Judge, POSCO Act, pursuant to the mandate of late U/s 18(3) of J.J. Act to be tried as an adult. The appellant has moved the bail application before Special Judge, POCSO Act, Meerut and the court concern has rejected the bail application on 07.06.2019. Hence the Appeal U/s 101(5) of the Juvenile Justice Act.

(f) CRIMINAL MISC. BAIL APPLICATION NO. 38818 of 2018 (Prince @ Aditya Tiwari) This is the IIInd. Bail Application. The earlier bail application no. 8744/2018 was rejected by this Court on 8.3.2018 with the direction to the court for expeditious disposal of the case. However, after getting his first bail application rejected, the applicant claims juvenility and vide order dated 08.05.2018, relying upon his date of birth mentioned in his High School Certificate, the Prince @ Aditya Tiwari was declared as juvenile holding that on the date of incident, he was aged about 17 years 2 months

and 19 days, less than 18 years and was declared as juvenile, his case was sent to Juvenile Justice Board. The report from District Probation Officer, Ballia was sought who has given his report on 31.05.2018. The Juvenile Justice Board vide order dated 06.07.2018 has opined that he has committed a heinous offence in murdering a young girl in a fit of infatuation with the deceased girl and as per the provision of Section 18(3) of the Act, the matter was remitted to Special Judge, POCSO Act, Ballia. The applicant is the main accused of FIR lodged by Jitendra Kumar Dubey registered as Case Crime No. 1128/2017 U/s 147, 148, 302, 354, 506 IPC and he in the FIR has attributed role of assault by giving a knife blow over the deceased Ragini Dubey on her neck. It is also mentioned that the alleged blood stained knife was recovered at his pointing out. The Bail Application of the applicant was disposed of on 26.7.2018 by Special Judge, POCSO Act, Ballia whereby the court has remitted back the matter before Juvenile Justice Board, Ballia without touching the merit of the case. Hence the IInd. bail application U/s 439 Cr.P.C.

[6] Now, the legal question surfaces out of all these appeals is, as to 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 by the court below while releasing them on bail/appeal/revision with regard to delinquent juveniles within the age group of 16-18 years?

[7] This Court has carefully heard the submissions made by the respective learned counsel of the respective appeals, mentioned above, and learned A.G.A. in its rebuttal. All the counsel of the appellants have submitted that the appellants after claiming the juvenility, their case was remitted to Special Judge, POCSO Act/Children Court, pursuant to the provisions of Section 15(1) of the Act. The Juvenile Justice Board (herein after referred to as "the Board") after having a preliminary assessment under section 15(1) of the Act, passed an order that there is need for a trial of the child as an adult and remitted the matter of trial of the case to the children's Court, having jurisdiction to try such an offence.

[8] The 'Children Court' is defined in Section 2(20) of the Act :-

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 have jurisdiction to try offences under the Act;

[9] Since in the State of U.P. there is no Children's Court and Special Court (POCSO Act) acts as Children Court herein, therefore, all such matters are being heard and decided by the said Special Judge(POCSO Act). Misconstruing the legal provisions of Section 18(3) of the Act, whereby it is directed that such child shall be "TRIED" as an adult, hence, all the appellants moved their respective regular bail applications before the said Special Judge, POCSO Act, whereupon the said Special Judge rejected their respective bail applications. Aggrieved by the said bail orders, the present appeal U/s 101(5) of the Act have been moved before this Court to ventilate their grievance.

[10] For scrutinizing the entire case, it is germane to spell out the mandate of law, provided under Section 15(1), 18(3) and 101(5) of the Act, which is being reproduced herein below: -

Section 15(1). In case of a heinous offence alleged to have been committed by a child, who has completed or is above the age of sixteen years, the Board shall conduct a preliminary assessment with regard to his mental and physical capacity to commit such offence, ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence, and may pass an order in accordance with the provisions of sub-section (3) of Section 18:

Provided that for such an assessment, the Board may take the assistance of experienced psychologists or psycho-social workers of other experts.

Section 18(3):- Where the Board after preliminary assessment under Section 15 pass an order that there is a need for trial of the said child as an adult, then the Board may order transfer of the trial of the case to the Children's Court having jurisdiction to try such offences.

Section 101(5): Any person aggrieved by an order of the Children's Court may file an appeal before the High Court in accordance with the procedure specified in the Code of Criminal Procedure, 1973 (2 of 1974).

[11] Learned counsel for the appellants, while addressing the maintainability of the present appeals, has drawn attention of the Court towards Section 8 of the Juvenile Justice Act for justifying the forum of such appeals before this Court. Section 8 of the Juvenile Justice Act speaks about powers, functions and responsibility of the Board, which reads thus:-

Section 8(1). Notwithstanding anything contained in any other law for the time being in force but save as otherwise expressly provided in this Act, the Board constituted for any district shall have the power to deal exclusively with all the proceedings under this Act, relating to children in conflict with law, in the area of jurisdiction of such Board.

(2) The powers conferred on the Board by or under this Act may also be exercised by the High Court and the Children's Court, when the proceedings come before them under Section 19 or in appeal, revision or otherwise.

[12] And thus, learned counsel for the appellants strenuously contended that since the Special Judge (POCSO Act) acting as Children Court, has rejected the bail applications, hence, section 101(5) of the Act is an apt forum to decide the bail applications of the respective appellants.

[13] This Court has carefully gone through the aforesaid provisions of law. Section 8 of the Act speaks about function and responsibility of the Board which has been categorically spelled out in Sub Section 8(a) to 8(n) of the Act, therefore, considering the functions and responsibilities of the aforesaid provisions of law, the High Courts and Children Courts have power akin to the Board in appeal or revision. In these functions and responsibilities, there is not even a whisper that the High Court can decide the bail application of the appellants in exercise of powers under section 101(5) of Act, and thus, I am afraid to accept the contentions raised by learned counsel in this regard. Moreover, when there is specific remedy provided under the Act itself regarding bail of delinquent juvenile, leaving no scope of any other interpretation, one cannot be permitted to mold it or bypass

it for the sake of his convenience and file an appeal under Section 101(5) of the Act before the High Court.

[14] In the entire scheme of Juvenile Justice Act there is one and only provision considering the bail of a child. The word "Child" defined in the Act in Section 2(12) of the Act, means a person who has not completed 18 years of age. Therefore, as per the mandate of the law, any child who is below 18 years of age, involved in an offence, can take the recourse of Section 12 of the Act for getting himself bailed out.

[15] Section 12 of the Juvenile Justice Act reads thus:-

Section 12. Bail to a person who is 'apparently a child' alleged to be in conflict with law-

(1) When any person, who is apparently a child and is alleged to have committed a bailable or non-bailable offence, is apprehended or detained by the police or appears or brought before a Board, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, be released on bail with or without surety or placed under the supervision of a probation officer or under the care of any fit person:

Provided that such person shall not be so released if there appears reasonable grounds for believing that the release is likely to bring that person into association with any known criminal or expose the said person to moral, physical or psychological danger or the person's release would defeat the ends of justice, and the Board shall record the reasons for denying the bail and circumstances that led to such a decision.

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

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

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

[16] Plain reading of Section 12 of the Act, speaks about bail to a person, who is "apparently a child". Thus, a million dollar question is as to what does this phrase 'apparently a child' connote? Does it mean that by perseverance of its senses, court can gauge that a particular is a child or it requires something more... The word "child" as mentioned above, has already been defined in Section 2(12) of the Act, meaning thereby, a person who has not completed 18 years. Thus, on conjoint reading apparently a child means, any person on his perseverance looks like a young lad of below 18 years,



can apply for bail under section 12 of the Act. Thus, so far as bail of a minor is concerned, there is no distinction or classification with regard to the age group.

[17] It is explicit from the plain reading of Section 12 of the Act that irrespective of nature and character of the crime, if a 'child' brought by the police or appears before the Board, such child shall, notwithstanding anything contained in Code of Criminal Procedure, 1973 or any other law enforced in time, "shall" be released on bail with or without surety under the supervision of Probation Officer or under the care of any fit person. The word "fit person" is defined under section 2(28) of the Act, means any person prepared to owe responsibility of a child for a specific purpose and after making due enquiry in this behalf, the Board may give the custody of child in the hand of "fit person". Thus, it is clear that the child delinquent has got a right to be released on bail with or without surety and the gravity, nature and depth of the offence shall not come into the way.

[18] However, in the proviso of Section 12(1) of the Act, there are three embargoes/riders; namely; (a) if there appears reasonable ground for believing that the release is likely to bring that person into association with any known criminal or; (b) expose that person as moral, physical or psychological danger or; (c) the person's release would defeat the ends of justice, the Board shall record the reasons for denying the bail and circumstances lead to such a decision.

[19] From the plain reading of the above proviso, it has been clearly borne out that (1) the juvenile delinquent has got unqualified right to seek bail irrespective of the gravity, depth and seriousness of the offence ; (2) his bail could be denied strictly on the three grounds, as mentioned under the proviso of Section 12 of the Act by the Board.

[20] In the event, if the bail application of a juvenile delinquent is refused under Section 12 of the Act, as per scheme of the Act of 2015 its remedy lies under section 101(1) of the Act, which speaks as under :-

101 Appeals-(1) Subject to the provisions of this Act, any person aggrieved by an order made by the Committee or the Board under this Act may, within thirty days from the date of such order, prefer an appeal to the Children's Court, except for decisions by the Committee related to Foster Care and Sponsorship. After Care for which the appeal shall lie with the District Magistrate.

And there is 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 from the date of such order, prefers an appeal to the court of Sessions.

[21] In the instant appeals, after getting their respective bail applications rejected by Special Judge (POCSO Act), the appellants straightway approached the High Court under section 101(5) of the Act. This is not mandatory 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 provisions of Section 101(1) of the Act, the Sessions Court 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 Session Judge of the same sessions Division.

[22] This appellate order passed by the learned Sessions Judge could be challenged before the High Court under Section 102 of Act whereby it has empowered High Court that either on its own motion or an application received in this behalf, call for the record of any proceeding in which any Committee or Board or Children's Court or 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.

[23] 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 all the appeals before consideration, after being declared juvenile, by the Board, the delinquent offenders applied for regular bail before Special Judge(POCSO Act) acting as Children Court, who rejected their respective bail applications and after that all, the appellants moved the appeals before this Court U/s 101(5) of the Act, which is clearly violative of the scheme of the Act and cannot be sustained.

[24] The appellants are hereby directed to approach for bail Under Section 12 of the Act, which shall be decided by the Board within seven days from its institution as per mandate of law under Section 12(4) of the Act.

Second aspect of the issue:-

[25] Now coming to the Second aspect of the issue; as to the whether gravity, depth and seriousness of the offence would be taken into account, while deciding the bail application of juvenile delinquent under the age group of 16 to 18 years ?

[26] In order to appreciate this aspect, it is imperative to spell out the STATEMENT OF OBJECTS AND REASONS; while legislating the new Juvenile Justice (Care and Protection) Act, 2015;

[27] This new Act has seen the light of the day on 15th January, 2016. Prior to this Act, a Juvenile Justice (Care and Protection), Act, 2000 was in force. After the ill-famed Delhi gang-rape case, popularly known as "Nirbhaya's Case", one of the prime accused in the year 2012 was tried by the Juvenile Court and was sentenced for 3 years only and that too from a Reformatory Home, which caused tremendous amount of upheaval and resentment amongst the masses and there was a severe disturbance in public perception over the Act of 2000. The prime accused of the Nirbhaya's case was few months younger than 18 years, was declared juvenile by the Board and was sentenced, as mentioned above. Number of petitions were filed before the Hon'ble Apex Court challenging the validity of the Act, 2000, but all the petitions were dismissed and the Act was held to be constitutional one. It is quite surprising that even after much horrifying, and horrendous Nirbahya's case, we have not budge and nudge an inch despite so many amendments made thereafter in the Juvenile's Act and the situation seems to be the same on date. Thereafter, on the demand of reduction of age of juvenile from 18 to 16 years was raised but that too was struck down by the Hon'ble Apex Court.

In a prevailing situation where rape against women is multiplying every hour of the day, Juvenile delinquency is a matter of serious concern and consideration which really requires contemplation

and pond ration as it is mounting up not only in developing or underdeveloped nations but this has plagued and has trapped even developed nations.

[28] In July 2014, Minister of Women and Child Development Department, Union of India has admitted at the floor of the Parliament House that the new enactment is on the cards whereby the delinquent juveniles under the age of 16-18 years are proposed to be tried as an adult. It was admitted by the Minister concerned that 50% of Juvenile crimes were committed by teens, who undertook the law in their hands, misconstruing that they would get away with it in the garb of the aforesaid Act and this misconstruing of law seems to be one of the reasons in increasing heinous crime i.e. rape, committed by children between age group of 16-18 years. According to the National Crime Record Bureau (herein after referred to as "Bureau"), heinous crimes committed by this age group have shockingly increased from 54% to 66% between 2003-13. While referring to the latest statistics of the Bureau, released in year 2017, has made a startling revelations that in the year 2016, 12,272 juveniles were convicted and 4,44,171 apprehended, out of which 32,577 juveniles were between the age group of 16-18 years. Thus, to plug the loop holes of the earlier enactment of 2000 and to segregate the offenders, who are in between 16-18 years shall be tried to be adult, taking into account their level of understanding and mental maturity. The legislation cannot keep its eyes shut to the fact that there was a rampant increase in the heinous offences committed by the adolescents of the aforesaid age group. To curb this menace, a new legislation was direly needed and in year 2016 the aforementioned Act was legislated.

[29] For the purposes of deciding the present appeals, the relevant excerpts of the object of the enactment is quoted herein below :-

".....3. The Juvenile Justice (Care and Protection of Children) Act was enacted in 2000 to provide for the protection of children. The Act was amended twice in 2006 and 2011 to address gaps in its implementation and make the law more child-friendly. During the course of the implementation of the Act, several issues arose such as increasing incidents of abuse of children in institutions, inadequate facilities, quality of care and rehabilitation measures in Homes, high pendency of cases, delays in adoption due to faulty and incomplete processing, lack of clarity regarding roles, responsibilities and accountability of institutions and, inadequate provisions to counter offences against children such as corporal punishment, sale of children for adoption purposes, etc. have highlighted the need to review the existing law.

4. Further increasing cases of crimes committed by children in the age group of 16-18 years in recent years makes it evident that the current provisions and system under the Juvenile Justice (Care and Protection of Children) Act, 2000, are ill equipped to tackle child offenders in this age group. The data collected by the National Crime Records Bureau establishes that crimes by children in the age group of 16-18 years have increased especially in certain categories of heinous offences.

5. Numerous changes are required in the existing Juvenile Justice (Care and Protection of Children) Act, 2000 to address the abovementioned issues and therefore, it is proposed to repeal existing Juvenile Justice (Care and Protection of Children) Act, 2000 and re-enact a comprehensive legislation inter alia to provide for general principles of care and protection of children, procedures

in case of children in need of care and protection and children in conflict with law rehabilitation and social re-integration measures for such children, adoption of orphan, abandoned and surrendered children and offences committed against children. This legislation would thus ensure proper care, protection, development treatment and social re-integration of children in difficult circumstance by adopting a child-friendly approach keeping in view the best interest of the child in mind.

[30] In the instant appeals, all the appellants belong to the age group of 16-18 years and the cases tried against them are undoubtedly serious and heinous offence and that is why after due assessment, the Board has referred their matter before the Children's Court to be tried as an adult. Except an embargo, that after holding a trial and recording their conviction, these delinquent juveniles would not be awarded death sentence or life imprisonment without a possibility of release. Section 21 of the Act reads as under:-

21. Order that may not be passed against a child in conflict with law.-No child in conflict with law shall be sentenced to death or for life imprisonment without the possibility of release, for any such offence, either under the provisions of this Act or under the provisions of the Indian Penal Code (45 of 1860) or any other law for the time being in force.

[31] Since all the appellants are languishing in jail and seeking bail for their respective offence and in the earlier paragraphs, the court has held that the remedy is available to adhere the provisions of Section 12 of the Act, which provides that the bail should be awarded to the persons, who are apparently children, as a matter of right as the word "shall" has been used in the provision itself, giving a mandatory indication. On the other hand, these delinquent juveniles are allegedly involved in the heinous offences committed by them, who have crossed the age limit of 16 years and after the assessment by the Board with regard to their mental and physical capacity to commit such offence, and ability to understand the consequences/repercussions and the circumstances in which he/they has/have allegedly committed the offence, has held that they shall be tried like adults, as per the provision of Section 18(3) of the Act.

[32] This in fact is a dichotomy, whereby a juvenile delinquent is being released on bail except those above three conditions provided under Section 12(Proviso) of the Act, that too as a matter of right. On the other hand, they shall be tried as adults and could be awarded any sentence as per the discretion of the court provided under the law, except the life sentence and death sentence. This dichotomous situation could be resolved by taking the recourse of "object" of the legislation and Para 4 of the Statement of object and reasons, clearly mandates that the enactment of Juvenile Justice Act, 2000 was ill-equipped to tackle child offenders between the age group of 16-18 years and involved in heinous offences, like, murder, gang rape, solitary-rape, bride burning etc. and to resolve this impasse, the court holds that for the purposes of bail to the adolescent offender between the age group of 16-18 years, involved in the heinous offence like murder, solitary-rape, gang-rape, bride burning, drug trafficking, the beneficial legislation for the purposes of bail under Section 12 of the Act shall not apply in its present shape and format. It would be no more as a matter of right to such delinquent minor, who is involved in heinous offences. It is not possible to furnish exhaustive list of such offences but it definitely connotes the same meaning as defined in Section 2(33) of the Act. While deciding the bail of such delinquent offender ranging between the age group of 16-18

years would be discretionary upon the court, which shall in addition to those grounds provided under Section 12(Proviso) of the Act, also take into account with regard to his mental, physical capacity, ability to understand the gravity of that heinous offence, including their respective participation in the crime and the circumstances wherein he/they has/have allegedly committed that particular grave and serious offence. All these factors too are determinative factors while adjudicating the bail applications of juvenile offenders in the age group of 16-18 years, else it would be a mockery of legislation and the object of the present legislation would reduce to naught.

[33] During the arguments, it was also brought to the notice of the Court that the Session Divisions are ill-equipped to sale out the mandatory provisions of the Act and its execution. While preliminary assessment was made in the heinous offence of the Board, there is requirement of law that the Board may take the assistance of "experienced psychologist or "psycho social experts". There is no expert in most of the Session Divisions which is really scary state of affairs whereby the Board is often handicapped, on this count. In the absence of expert psychologist or psycho-social expert, it would not be possible to assess the mental or psychological faculty of mind of that particular juvenile objectively, which in fact, is the foundation stone of Juvenile Justice Jurisprudence in its correct prospective. In the absence of detailed objective preliminary age group of 16-18 years, their level of understanding about the gravity of the offence and other attending circumstances, the very purpose and objective of present Act would go haywire. In the prevailing circumstances, this Court thus directs the State Government to take such a remedial step preferably within a period of six months to appoint a panel of at least six expert psychologist/psycho-social experts in each Commissioner's Division, so that their services may be utilized by the respective Juvenile Justice Boards within that particular Division for making such an assessment of delinquent juveniles.

[34] Under the aforesaid circumstances, all the appeals, mentioned above, hereby, fails and accordingly dismissed with the direction that appellants would approach for bail under Section 12 of the Juvenile Justice Act, 2015 and their bail applications would be heard and decided within seven days of its institution by the Board and thereafter, they will adhere the conservative path for their redressal of grievance provided under the Act.

Order date :-

Shailesh/Sumit S