

IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
CRA No. 818 of 2024
(JUVENILE X Vs THE STATE OF MADHYA PRADESH)

Dated : 21-09-2024

Shri Aditya Jain, learned counsel for the petitioner.

Shri Surendra Kumar Gupta, learned counsel for the respondent/state.

Heard on IA No.8785/2024, which is the second application for suspension of jail sentence filed under section 389 of Cr.P.C.

2. The present appeal is filed under Section 101 of the Juvenile (Care and Protection of Children) Act, 2015 (hereinafter referred as Act) against the order of conviction under Section 302 of IPC for 7 years RI with fine of Rs.3000/-, in default of payment of fine, 3 months RI; under Section 201 of IPC for 3 years RI with fine of Rs.2000/-, in default of 2 months RI passed by 4th ASJ, Juvenile Court, Dist. Shajapur by judgment dated 21.12.2023 in SPST No.41/2021 arising out of Crime No. 171/2021.

3. The earlier application for suspension of sentence was rejected by the order dated 10.04.2024, considering the report of the Probation Officer in which it was stated that the applicant's father works as a chowkidar and has a habit of consuming alcohol, while the applicant's mother is a housewife, both of whom are unable to look after him. Additionally, the applicant has an unmarried sister, Shivani. The report also reflects that the applicant is unemployed and faces financial difficulties, with the family consisting only of his parents and unmarried sister. Considering the same, the application was rejected on the ground that there

is no adult member in the family to have proper supervision and control over the child in conflict with the law (In short 'CICL')

4. The present application is filed on the ground that the said order was passed on the basis of the report of the Probation Officer and on consideration of the seriousness of the offence committed by the applicant. He argues that the said report was incorrect stating that the applicant is unemployed. Alongwith the application, he has filed a letter issued by the employer R.K Kitchen Mansion certifying that the applicant was employed with them from 31.12.2021 to 19.12.2023 and was earning. Thus the report of the Probation Officer was incorrect and the seriousness of the offence or manner of commission of offence alone cannot be sole consideration for considering an application for bail or suspension of sentence. In support of his submission he referred to the decision of this court in the case of *Criminal Revision No.755/2023 Mahesh Rao V. State of Madhya Pradesh, Dated 21/03.2023*. Therefore the case of the applicant for Suspension of Sentence/ Bail requires reconsideration.

5. Considering the said certificate, an explanation was sought from the Probation Officer as to how the aforesaid fact was incorrectly mentioned in the earlier report. The Probation Officer submitted his explanation before this Court vide communication dated 04.09.2024 stating that while submitting the said report, he visited the house of the applicant and after collecting the information from the family members and neighbors, the said information was given in the report that he was not employed anywhere. No information was supplied regarding employment of the applicant and therefore in an earlier report, the column for employment was left blank.

6. Per contra, counsel for the State submits that the earlier application was rejected after due consideration of the Probation Officer's report, the seriousness of the offence, and the manner of its commission; hence, no case is made out for the grant of suspension of jail sentence/bail.

7. I have heard learned counsel for the parties at length, and after hearing them, the following issues arise for consideration:

- i. When the child becomes an adult during the pendency of trial/appeal what should be the consideration for grant of bail/ suspension of sentence.?
- ii. Whether the application will be considered on merits means gravity and manner of commission of offences irrespective of the report of Probation Officer or report of the probation officer will be relevant consideration?
- iii. Whether the provisions of the Act or the provisions of the Cr.P.C. shall apply for the consideration of bail / Suspension of Sentence to the CICL?

8. In order to appreciate the aforesaid rival submission and issues crops up for the consideration, it is apposite to refer to the following provisions of the Act:

Section 2 (12) “child” means a person who has not completed eighteen years of age.

Section 2 (13) “child in conflict with law” means a child who is alleged or found to have committed an offence and who has not completed eighteen years of age on the date of commission of such offence

Section (28) “fit person” means any person, prepared to own the responsibility of a child, for a specific purpose, and such person is identified after inquiry made in this behalf and recognised as fit for the said purpose, by the Committee or, as the case may be, the Board, to receive and take care of the child;

(33) **“heinous offences”** includes the offences for which the minimum punishment under the Indian Penal Code (45 of 1860) or any other law for the time being in force is imprisonment for seven years or more;

(35) **“juvenile”** means a child below the age of eighteen years;

(46) **“place of safety”** means any place or institution, not being a police lock-up or jail, established separately or attached to an observation home or a special home, as the case may be, the person in-charge of which is willing to receive and take care of the children alleged or found to be in conflict with law, by an order of the Board or the Children's Court, both during inquiry and ongoing rehabilitation after having been found guilty for a period and purpose as specified in the order;

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 offense, 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 1[or a place of safety, as the case may be,] in such manner as may be prescribed until the person can be brought before a Board.

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

Section (18) Orders regarding child found to be in conflict with law.—

(1) Where a Board is satisfied on inquiry that a child irrespective of age has committed a petty offence, or a serious offence, or a child below the age of sixteen years has committed a heinous offence, 1[or a child above the age of sixteen years has committed a heinous offence and the Board has, after preliminary assessment under Section 15, disposed of the matter] then, notwithstanding anything contrary contained in any other law for the time being in force, and based on the nature of offence, specific need for supervision or intervention, circumstances as brought out in the social investigation report and past conduct of the child, the Board may, if it so thinks fit,—

- (a) allow the child to go home after advice or admonition by following appropriate inquiry and counselling to such child and to his parents or the guardian;
- (b) direct the child to participate in group counselling and similar activities;
- (c) order the child to perform community service under the supervision of an organisation or institution, or a specified person, persons or group of persons identified by the Board;
- (d) order the child or parents or the guardian of the child to pay fine:

Provided that, in case the child is working, it may be ensured that the provisions of any labour law for the time being in force are not violated;

(e) direct the child to be released on probation of good conduct and placed under the care of any parent, guardian or fit person, on such parent, guardian or fit person executing a bond, with or without surety, as the Board may require, for the good behaviour and child's well-being for any period not exceeding three years;

(f) direct the child to be released on probation of good conduct and placed under the care and supervision of any fit facility for ensuring the good behaviour and child's well-being for any period not exceeding three years;

(g) direct the child to be sent to a special home, for such period, not exceeding three years, as it thinks fit, for providing reformatory services including education, skill development, counselling, behaviour modification therapy, and psychiatric support during the period of stay in the special home:

Provided that if the conduct and behaviour of the child has been such that, it would not be in the child's interest, or in the interest of other children housed in a special home, the Board may send such child to the place of safety.

(2) If an order is passed under clauses (a) to (g) of sub-section (1), the Board may, in addition pass orders to—

(i) attend school; or

(ii) attend a vocational training centre; or

(iii) attend a therapeutic centre; or

(iv) prohibit the child from visiting, frequenting or appearing at a specified place; or

(v) undergo a de-addiction programme.

(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 19. Powers of Children's Court.-

(1)

(2) The Children's Court shall ensure that the final order, with regard to a child in conflict with law, shall include an individual care plan for the rehabilitation of the child, including follow up by the probation officer or the District Child Protection Unit or a social worker.

(3) The Children's Court shall ensure that the child who is found to be in conflict with law is sent to a place of safety till he attains the age of twenty-one years and thereafter, the person shall be transferred to a jail : Provided that the reformatory services including educational services, skill development, alternative therapy such as counseling, behavior modification therapy, and psychiatric support shall be provided to the child during the period of his stay in the place of safety.

(4)

(5)

Section (20) Child attained age of twenty-one years and yet to complete prescribed term of stay in place of safety.—

(1) When the child in conflict with the law attains the age of twenty-one years and is yet to complete the term of stay, the Children's Court shall provide for a follow-up by the probation officer or the District Child Protection Unit or a social worker or by itself, as required, to evaluate if such child has undergone reformatory changes and if the child can be a contributing member of the society and for this purpose the progress records of the child under sub-section (4) of Section 19, along with evaluation of relevant experts are to be taken into consideration.

(2) After the completion of the procedure specified under sub-section (1), the Children's Court may—

(i) decide to release the child on such conditions as it deems fit which includes appointment of a monitoring authority for the remainder of the prescribed term of stay;

(ii) decide that the child shall complete the remainder of his term in a jail:

Provided that each State Government shall maintain a list of monitoring authorities and monitoring procedures as may be prescribed.

9. In light of the aforesaid provisions of the Act, the judgments passed by the court are referred as under:-

It has been observed in *Pratap Singh v. State of Jharkhand, 2005 SCC (Cri) 742*, that:

10. Thus, the whole object of the Act is to provide for the care, protection, treatment, development and rehabilitation of neglected or delinquent juveniles. It is a beneficial legislation aimed at making available the benefit of the Act to the neglected or delinquent juveniles. It is settled law that the interpretation of the statute of beneficial legislation must be to advance the cause of legislation for the benefit of whom it is made and not to frustrate the intendment of the legislation.

In the case of *X Vs. State of Uttarakhand 2024 SCC OnLine Utt 1479* it was held

“10. Even if a CIL is transferred for trial as an adult under Section 18(3) of the Act, his bail application shall be entertained under Section 12 of the Act. This view has been consistently discussed and followed in various judgments of various High Courts. In the case of *Ccl A v. State Nct of Delhi, (2020) 10 DEL CK 0155*, the Hon'ble Delhi High Court has categorically held that, “even when a child is sent-up for trial as an adult before a Children's Court, the child does not become an adult or ‘major’, but is only to be treated differently considering the heinous nature of the offence alleged and consequent need for a stricter treatment of the offender, though still as a juvenile in conflict with law”. The Hon'ble Delhi High Court further observed that, “even though a child may be sent-up for trial before the Children's Court as an adult, there is no provision in the JJ Act that requires any departure from considering the matter of release of such child on bail under section 12”. Similar views have been expressed in the cases of

Siddalinga SN v. State of Karnataka and Shubham Alias Bablu Milind v. State of Maharashtra, [2022 SCC OnLine Bom 9772](#).

11. The bail to a CIL may be denied if there appear reasonable grounds for believing that his release is likely to bring him into association with any known criminal or expose him to any moral, physical or psychological danger, or his release would defeat the ends of justice.

12. The governing principle of the Act is given under Section 3 of the Act that principle of best interest is one of the principles, which provides that all decisions regarding the child shall be based on the primary consideration that they are in the best interest of the child and to help the child to develop full potential. In fact, as per principle (v), the primary responsibility of care, nurture and protection of the child shall be that of the biological family or adoptive or foster parents, as the case may be.”

In the case of *Shubham Suryavanshi @Bablu Milind V. State of Maharashtra (Bombay High Court) (Bail Application No. 2282/2021)* The object of the Act is reconsidered in Para 12 stating that:

“The Juvenile Justice Act is a beneficial piece of legislation and it must be construed by taking into consideration the object behind its enactment, being to provide for the care, protection, treatment, development and rehabilitation of neglected or delinquent juveniles. It is a beneficial legislation aimed at making available the benefit of the Act to the neglected or delinquent juveniles.”

Further, In case of *Narayan Sharma v. State of M.P., ILR 2012 MP 796* a Coordinate Bench of this Court while considering the provision of the Section 12 of the Act observed as under:

"In the opinion of this court, the Juvenile Justice Board may be justified in denying bail to a juvenile involved in a heinous crime only if there is material before it to form a prima facie opinion on the aspects carved out as exception to rule of bail in section 12 of the Act itself. There must be some mechanism with the Juvenile

Justice Board to gather material and form an opinion as to whether the juvenile needs to be denied bail by bringing his case under the exceptions to bail engrafted in Section 12. The opinion to be formed by the Board, by no means, can be subjective and has to be objective. Either the prosecution should place some prima facie material before the Board or the Court to show that release of a juvenile on bail may expose him to moral, physical or psychological danger of the Board may obtain a report from the Probation Officer attached to the Board regarding antecedents and circumstances attended to the juvenile, both pre and post crime and it is only thereafter the Board or the Court should crystallize its opinion regarding release or non release of the juvenile on bail, though involved in a heinous crime. A reference to the statutory provisions governing bail to a juvenile contained in section 12 would show that there is a mandate of law that the juvenile has to be released on bail, except only in those cases where the case falls in one or the other exception engrafted by the legislature in Section 12 itself."

Further it has been observed in *Sanjay Chaurasia v. State of U.P.*, (2006) 55 ACC 480 that:

"10.In case of the refusal of the bail, some reasonable grounds for believing above mentioned exceptions must be brought before the Court concerned by the prosecution but in the present case, no such ground for believing any of the above mentioned exception has been brought by the prosecution before the Juvenile Justice Board and Appellate Court. The Appellate Court dismissed the appeal only on the presumption that due to commission of this offence, the father and other relatives of other kidnapped boy had developed enmity with the revisionist, that is why in case of his release, the physical and mental life of the revisionist will be in danger and his release will defeat the ends of justice but substantial to this presumption no material has been brought before the appellate court and the same has not been discussed and only on the basis of the presumption, Juvenile Justice Board has refused the bail of the revisionist which is in the present case is unjustified and against the spirit of the Act."

Considering the aforesaid, In the case of *Mahesh Rao (Supra)* it has been held that the bail application of a CICL cannot be rejected merely on the ground of seriousness of the crime. The only exception to grant of the bail to a CICL is the reasonable ground for believing that release would bring him into association with any known criminal or expose him to moral, physical or psychological danger or his release would defeat the ends of justice.

Hon'ble Apex Court in the case of *Sampurna Behura Vs. Union of India (2018) 4 SCC 433* has issued directions to the concerned authority for implementation of provisions of the JJ Act.

“**23.** The Court noted in that decision that if a child is a national asset (as per the National Policy), it is the duty of the State to look after the child with a view to ensuring full development of the personality and that is why statutes dealing with children provide that a child shall not be kept in jail. It was directed that on no occasion should children be kept in jail and if a State Government does not have sufficient accommodation in its remand homes or observation homes for children, they should be released on bail instead of being subjected to incarceration in jail.”

In the case of *Vishvas Vs. State of Punjab in CRR No.53/2021 disposed of on 08.02.2021* on analyzing Section 12 of the JJ Act held that gravity of offence is immaterial in deciding the bail application. The bail of a child in conflict with law cannot be rejected in a routine manner and if the bail is declined, a reasoned order has to be given by the Board. A juvenile has to be released on bail mandatorily unless and until the exceptions carved out in proviso to Section 12 (1) of the JJ Act, 2015, itself are made out.

Further stated in para 15 that the Social Investigation Report from the Probation Officer has to be taken into consideration while deciding the bail

application filed under Section 12 of the JJ Act, relied on the latest judgment of Allahabad High Court in *Shahaab Ali v. State of U.P., (2020) 1 HCC (All) 1*.

In the case of *Pawan v. State of Uttaranchal [(2009) 15 SCC 259 : (2010) 2 SCC (Cri) 522]*, a three-Judge Bench of this Court had emphasized on the need for satisfactory, adequate and prima facie material before an inquiry under Rule 12 could be commenced and the law laid down in *Pawan [(2009) 15 SCC 259 : (2010) 2 SCC (Cri) 522]* must be followed as and when claim of juvenility is raised before this Court.

In the case of **Hari Ram v. State of Rajasthan, 2009 (13) SCC 211**

16. As indicated in the very beginning of this judgment, the Juvenile Justice Act, 2000, was enacted to deal with offences allegedly committed by juveniles on a different footing from adults, with the object of rehabilitating them. The need to treat children differently from adults in relation to commission of offences had been under the consideration of the Central Government ever since India achieved independence. With such object in mind, Parliament enacted the Juvenile Justice Act, 1986, in order to achieve the constitutional goals contemplated in Articles 15(3), 39(e) & (f), 45 and 47 of the Constitution imposing on the State a responsibility of ensuring that all the needs of children are met and that their basic human rights are fully protected.

10. In the case of the heinous offence committed by a child between the age of 16 to 18 years, the very consideration of provisions of JJ Act, it is crystal clear that if a person was juvenile at the time of offence but has turned 18 years during the trial he shall still be covered by the provisions of JJ Act including the bail provision because the Act provides for consideration of the age of child in conflict with law (CICL) at the time of offence. However, if the Juvenile Justice Board transfers the case to a regular criminal case (in case of heinous crimes), the bail provisions

under the Cr.P.C may then apply. The other judgments in regard to the trial of a juvenile between the age 16-18 years is mentioned below:-

In case of *Subramanian Swamy v. Raju, 2014 (8) SCC 390*- The case focuses on the constitutional validity of certain provisions of the Juvenile Justice Act, particularly in heinous crimes committed by juveniles aged 16 to 18 years. The judgment in para 36 referred the observation made by the Committee constituted under Article 45 of the UN Convention (CRC) stating:

“36. It needs to be clarified that the concluding observations of the Committee under Article 45 of the UN Convention (CRC) are qua a particular State party whereas general comments of the Committee under the same article are authoritative interpretations addressed to all State parties. The above distinction between “concluding observations” and “general comments” is highlighted to draw attention to the fact that in the meeting of the Committee held in Geneva in the year 2007 certain general observations with regard to MACR of 18 years were made which would be applicable to State parties other than India as the law had already been amended in our country pursuant to the concluding observations made by the Committee in the year 2000 specifically qua India. The views of the Committee in respect of other member States may be usefully taken note of at this stage by extracting the recommendations in the nature of general comments in Paras 36, 37 and 38 of the Report:

“36. The Committee also wishes to draw the attention of State parties to the upper age-limit for the application of the rules of juvenile justice. These special rules—in terms both of special procedural rules and of rules for diversion and special measures—should apply, starting at the MACR set in the country, for all children who, at the time of their alleged commission of an offence (or act punishable under the criminal law), have not yet reached the age of 18 years.

37. The Committee wishes to remind State parties that they have recognised the right of every child alleged as, accused of, or recognised as having infringed the penal law to be treated in accordance with the provisions of Article 40 of CRC. This means that every person under the age of 18 years at the time of the alleged commission of an offence must be treated in accordance with the rules of juvenile justice.

38. The Committee, therefore, recommends that those State parties which limit the applicability of their juvenile justice rules to children under the age of 16 (or lower) years, or which allow by way of exception that 16 or 17 year old children are treated as adult criminals, change their laws with a view to achieving a non-discriminatory full application of their juvenile justice rules to all persons under the age of 18 years. The Committee notes with appreciation that some State parties allow for the application of the rules and regulations of juvenile justice to persons aged 18 and older, usually till the age of 21, either as a general rule or by way of exception.”

In the case of ***Amit v. State of Maharashtra, 2011 (13) SCC 744-***

17. The Explanation to Section 20 which was added in 2006 makes it clear that in all pending cases, which would include not only trials but even subsequent proceedings by way of revision or appeal, the determination of juvenility of a juvenile would be in terms of clause (l) of Section 2, even if the juvenile ceased to be a juvenile on or before 1-4-2001, when the Act came into force and the provisions of the Act would apply as if the said provision had been in force for all purposes and for all material times when the alleged offence was committed. Section 20 enables the court to consider and determine the juvenility of a person even after conviction by the regular court and also empowers the court, while maintaining the conviction, to set aside the sentence imposed and forward the case to the Board concerned for passing sentence in accordance with the provisions of the Act.

11. According to the Juvenile Justice Model Rules, 2016, if the child is released by the Court after the reformation association, the monitoring authority could be Probation Officer, Child Welfare Officer or a fit person.

12. Section 20(1) engrafts the provisions in relation to the juvenile who has turned 21 years as per the provisions of section 20(1), has undergone informative changes and can be a contributing member of the society based on the rehabilitation and evaluation of experts decide to release the child on conditions including the appointment of a monitoring authority for the remainder of the term or decide that the child will complete the remainder of the jail as per sub-section 2 of section 20. As per the provisions of JJ Act, if the case is transferred to an adult Criminal Court and the person is convicted as an adult, he might be sent to regular jail upon conviction but only after turning 21 years until then, he will be stayed at a place of safety.

13. In the light of the aforesaid provisions of the Act and the enunciation of law, the issues are answered as under :-

When the child becomes an adult during the pendency of the trial, he shall be tried as a 'child' and not as an adult and the consideration for grant of bail of the 'child' shall be as per the provisions under section 12 of the Act and the law laid down in various judgments of the court and the Supreme Court as referred herein. In the case of a child who has turned 21 years during the trial, his case shall be considered as per the provisions of section 20 of the Act. As per the sub-section 2 of section 20 of the Act, if the case is transferred to an adult criminal court and the person is convicted as an adult, he shall be sent to a regular jail upon conviction but only after turning 21 years until then, he will be stayed at a place of safety. In such eventuality the

court has to keep in mind that the primary object of the Act is the juvenile's rehabilitation not punishment. The discretion to deny the bail/suspension of sentence is only in exceptional cases where the safety or justice interest are involved. The report of Probation Officer shall be relevant consideration for considering an application for bail/suspension of sentence and the application shall not be rejected only on consideration of seriousness or manner of commission of offense in the case of a child who has attained the age of 21 years during the pendency of the trial/appeal. Though, the provisions of Code of Criminal Procedure may apply.

14. It is undisputed that at the time of the commission of offence, the applicant was more than 16 years old and less than 18 years old. However, at present, he is more than 21 years old. He was tried as an adult and at present he is staying at a 'Place of Safety' the period of which has come to an end and he is required to be sent to regular jail as he has already become more than 21 years.

15. In view of the issues answered by this Court, the application for suspension of sentence/bail is being considered. As per the Probation Report, in which earlier the column of employment was left blank but subsequently it has been found that he was employed. Upon perusal of the report of the Probation Officer, it is noticed that there is no adverse report against the applicant. However, he has stated that the father of the appellant is working as a Chowkidar and has a habit of consuming liquor. The mother of the appellant is a housewife and there is no male member in the family to have control over the appellant. The application was rejected. Since the report of the Probation Officer is not adverse to the appellant relating to the conduct, behavior in the observation home and place of safety and further the conviction is based on circumstantial evidence, where the appellant was found in a car traveling along with the other co-accused at the spot in which the dead body of

the deceased was kept in dick. There is no evidence that the appellant was aware of the fact that the dead body was kept in the dicky. This Court finds prima-facie the case for grant of bail because the appellant is more than 21 years and he cannot be denied bail/suspension of sentence only on the ground that there is no male member in the family to have control over him. This Court finds that the appellant shall be released on bail but he will be under the supervision and surveillance of Probation Officer, Women and Child Development, Shajapur.

16. Accordingly, IA No.8785/2024 is allowed. The jail sentence of the appellant shall remain suspended and he shall be released on furnishing a personal bond of Rs.25,000/- to the satisfaction of the Children Court Shajapur and three months time is granted to arrange one surety to the extent of the said amount to the satisfaction of the court and on the condition that the appellant shall report to the Probation Officer once in every two months and his performance and conduct shall be monitored by the Probation Officer for the remainder of the jail sentence. After every six months, the Probation Officer shall submit a report regarding his conduct, behavior etc before this Court and in case if an adverse report is received, the prosecution may file an application for cancellation of suspension of jail sentence.

(VIJAY KUMAR SHUKLA)
JUDGE

Sourabh