

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION  
BAIL APPLICATION NO.3838 OF 2021  
WITH  
INTERIM APPLICATION NO.699 OF 2022

Sandeep Ayodhya Prasad Rajak, a .. Applicant  
minor through his mother Shimla  
Ayodhya Prasad Rajak

Versus

The State of Maharashtra .. Respondent

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Ms.Maharukh Adenwalla for the Applicant.

Ms.A.A.Takalkar, A.P.P. for the State/Respondent.

Ms.Saveena Bedi for the Intervenor.

Investigating Officer-Mr.Jayavant Mate attached to MHB  
Colony Police Station, present.

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CORAM: BHARATI DANGRE, J.  
DATED : 22<sup>nd</sup> AUGUST, 2022

**P.C:-**

1. By the present application, the applicant, a juvenile/child in conflict with law, presently housed in Observation Home at Dongri, Mumbai, seeks his release on bail by invoking Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short, "**the Act of 2015**"). The applicant came to

be arrested on 26/12/2020 and he being a minor, the application is filed through his mother Mrs.Shimla Rajak.

His arrest was effected in connection with C.R.No.759 of 2020 which invokes Sections 376-D, 376(1)(n), 354, 354-D, 114, 509, 506 of the Indian Penal Code (for short, **“the IPC”**) and Sections 6, 8 and 12 of the Protection of Children from Sexual Offences Act (for short **“the POCSO Act”**). In the said C.R., the present applicant and five adults came to be arrested and the police report/charge-sheet was filed before the Juvenile Justice Board on 18/01/2021.

2. Heard learned counsel Ms.Maharukh Adenwala for the applicant, learned counsel Ms.Saveena Bedi for the Intervenor/the father of the victim girl and learned A.P.P. Ms.Takalkar for the State.

Learned counsel for the applicant would seek release of the applicant on the basis of Section 12 of the Act of 2015 and she would submit that on the date on which the offence was committed, he was about 16 years and 5 months, his date of birth being 06/06/2004. She would submit that the applicant belongs to a lower middle socio economic background and his father is working as a watchman and his mother is a homemaker. The applicant has passed his 10<sup>th</sup> standard, but

could not persuade his education on account of his mother's illness and the financial difficulties faced by the family.

Learned counsel would submit that the accusations levelled against the applicant are completely baseless and her submission is, the complainant was residing in police colony and as per his version, the victim, a child aged 7 years reported about an incident when she was playing with her friends in the building and some unknown men made inquiries with her and asked her to come to the place where Balli (watchman of the society) takes a bath and then they would touch her private part and that she should not disclose it to any one. On such complaint, the FIR came to be registered under Sections 504, 506 read with Section 34 of IPC. Few days later, the child disclosed that one of the accused has held her hand and followed her up the stairs and after few days thereafter, she further disclosed that the accused persons had penetrated their finger and penis into her vagina.

According to the learned counsel for the applicant, the involvement of the applicant in the subject C.R. is doubtful, as the applicant has been identified as, 'Prema', but the prosecution has failed to establish that the applicant is known as 'Prema' and, therefore, the identification by the young girl

based on his photograph, is argued to be a non-reliable circumstance. Her submission is, the implication of the applicant is on the basis of the statement of his paternal uncle with whom his family is at loggerhead.

It is submitted that the recent report of the Probation Officer represents his present psychological and physical status. Relying upon the report of the Child Guidance Clinic (for short, “CGC”) dated 25/01/2021 and the report of the Probation Officer dated 08/01/2021, who conducted a preliminary assessment, learned counsel would submit that the applicant is not a danger to the society and in fact, the CGC has clearly reported that he has shown good potential to excel, if right kind of opportunities, guidance, support and education are made available to him. Submitting that he has been deprived of his education in the Observation Home and his long detention in the Observation Home has caused disruption to his life, Ms.Adenwala would submit that the whole purpose of the Act of 2015 is to consider a child as distinct and different from an adult, who has to undergo through the normal procedure on being accused of an offence. The submission is, the principle of repatriation and restoration, which has been recognised as an essential principle by the

legislature through the Act of 2015, stands violated. It is also submitted that the prolonged detention is hampering his progress and also effecting his mental health as it has caused him undue anxiety and his further stay in the Observation Home is against his interest.

It is also submitted that 'Ashiyana Foundation', an NGO, who has been counseling the applicant and assisting in his rehabilitation during his stay in the Observation Home, is willing to care for him and is also ready to rehabilitate him. Apart from this, his uncle has also given an affidavit, stating that he is ready to receive him and keep him in his home under his care, in Mumbai itself.

3. The leaned counsel has relied upon a decision of the Delhi High Court in the case of *CCL 'A' Vs. State (NCT of Delhi)*<sup>1</sup>. Reliance is further placed on the decision of this Court in case of *Prasad Subhash Khade Vs. State of Maharashtra (Bail Application No.1647 of 2020 decided on 18/03/2021)*, where by invoking the principle to be followed while implementing the provisions of the Act of 2015 and, particularly, Clauses (i),(iv),(v),(xii) and (xiii), the applicant has been released on bail.

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1 2021 Cri.L.J. 1251

4. The learned A.P.P. strongly opposes the application and submits that considering the heinous nature of the offence with which the accused is charged, when a 7 year's old girl was subjected to gang-rape, the applicant does not deserve his release on bail. She would also draw my attention to the very same judgment of Delhi High Court on which the learned counsel for the applicant has placed reliance. The learned A.P.P. would submit that the applicant would pose a danger to the victim girl, on being released on bail and considering his *prima facie*, involvement in the subject C.R., the learned Principal Magistrate, City Juvenile Justice Board, Dongri, Mumbai has rightly rejected the application, observing that the safety of the child is inside the Observation Home and it is not a fit case for release. The learned A.P.P. would further submit that the learned Special Judge under the POCSO Act has also rejected the application filed by the applicant under Section 439 of Cr.P.C. by recording that the accusations faced by him are grave in nature and it is a case of gang-rape, an aggravated sex assault. Inviting my attention to the observations made by the learned Judge, where the apprehension is expressed that the victim girl, who has undergone with traumatic experience, if comes in contact with

the applicant, as they all are residing in the same area, it would affect her safety.

5. I have also heard learned counsel Ms. Saveena Bedi, who appeared for the complainant and joined the A.P.P. in strongly opposing the application filed for release of the applicant. The learned counsel has invited my attention to the decision of the Hon'ble Supreme Court in case of *Shilpa Mittal Vs. State of NCT of Delhi & Anr.*<sup>2</sup> and she has also placed before me the subsequent amendment to the Act of 2015, which has been published in the Gazette of India on 07/08/2021 and by highlighting the statement of objects and reasons of the said amendment, learned counsel would submit that the applicant, who is accused of a heinous offence, do not deserve his release on bail and, particularly when, he is to be tried as an adult. She has also placed on record an order passed by the learned Principal Magistrate, City Juvenile Justice Board, Dongri, Mumbai dated 31/03/2021, when on the basis of the preliminary assessment in respect of the child, the record and proceedings of his case are transferred to the Children Court for trial vide Section 15 read with Section 18(3) of the Act of

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<sup>2</sup> (2020) 2 SCC 787

2015. Learned counsel would, therefore, requests that the application shall be rejected.

6. The Act of 2015 has been primarily enacted by taking note that the justice system available for adults is not suitable to be applied to a child or a juvenile. A new method has been evolved to try him, on being accused of an offence, so as to protect his interest. The Act insulates the juvenile from being exposed to vagaries of police and the normal criminal system.

Article 15 of the Constitution of India, *inter alia*, confers a power upon the State to make a special provision for children and Articles 39(e) and (f), 45 and 47 make the State responsible for ensuring that the needs of children are met and their basic human rights are protected.

In furtherance of the United Nations Convention on the Rights of Children, ratified by India on 11/12/1992, the Juvenile Justice (Care and Protection of Children) Act was enacted in 2000, which contained measures for protection of children covering the subject of treatment of a child in a manner consistent with the promotion of the child's sense of dignity and worth and focusing on reinforcing the child's respect for human right. That was amended twice in 2006 and 2011 to address gaps in its implementation, with a view to



make the law more child-friendly. However, during its implementation, 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 etc. which highlighted the need to review the existing law. It was further proposed to repeal the existing Juvenile Justice (Care and Protection of Children) Act, 2000 and re-enact the 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, their rehabilitation and social re-integration measures and offences committed against the children.

This legislation was expected to ensure proper care, protection, development, treatment and social re-integration of children in difficult circumstances by adopting a child-friendly approach, keeping in view the best interest of the child in mind.

7. The Act of 2015 defines the term 'child' as a person who has not completed eighteen years of age and '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.

‘Juvenile’ is defined as a child below the age of eighteen years.

8. The Act of 2015 focuses on the general principle to be followed in its administration by the Central Government, State Governments, the Board, the Committee or other Agencies, who are responsible for implementing the provisions of the Act and some of the salient principles to be adhered to are enumerated in Section 3 as under :-

(i) *Principle of presumption of innocence* : Any child shall be presumed to be an innocent of any mala fide or criminal intent up to the age of eighteen years.

(ii).....

(iv) *Principle of best interest*: 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.

(v) *Principle of family responsibility* : 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.

(vi) ....

(xii) *Principle of institutionalisation as a measure of last resort* : A child shall be placed in institutional care as a step of last resort after making a reasonable inquiry.

(xiii) *Principle of repatriation and restoration* : Every child in the juvenile justice system shall have the right to be re-united with his family at the earliest and to be restored to

the same socio-economic and cultural status that he was in, before coming under the purview of this Act, unless such restoration and repatriation is not in his best interest.”

9. Chapter IV of the Act of 2015 prescribes the procedure to be followed in relation to children in conflict with law and Section 10 is a provision for apprehending of a child alleged to be in conflict with law and it contemplates that, as soon as a juvenile is apprehended, he shall be placed under the charge of the special juvenile police unit or the designated child welfare police officer, who shall produce the child before the Board within a period of twenty-four hours from his apprehension. It is specifically provided that in no case, a child alleged to be in conflict with law shall be placed in a police lockup or lodged in a jail. Section 12 of the Act is a provision pertaining to release of a child alleged to be in conflict with law.

Whenever a child, alleged to be in conflict with law is apprehended, information shall be provided to the parents, guardian or probation officer as per the mandate contained in Section 13. Section 14 of the Act makes it imperative for the Board to hold an inquiry and pass orders in relation to such child, as it deems fit under Section 17. A preliminary assessment in case of heinous offences makes it imperative for

the Board to conduct an inquiry within a period of three months. Section 15 prescribes for preliminary assessment by the Board in respect of a child, who is the accused of an heinous offence, 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 an order may be passed in accordance with sub-section (3) of Section 18. Section 18 contemplates the orders to be passed by the Board on an inquiry being completed. After preliminary assessment and based on the nature of the 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 pass distinct orders contemplated by Section 18. By virtue of sub-section (3) of Section 18, where the Board after preliminary assessment is of the opinion 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.

10. In the background of the aforesaid statutory scheme contained in the Act of 2015, when the facts of the case are examined, it can be discerned that the applicant was arrested on 26/12/2020 by the concerned police station and he was produced before the Juvenile Justice Board (for short, “**the JJB**”) constituted under the Act of 2015 and was placed in the Observation Home.

The applicant filed his first bail application before the JJB, which was rejected by an order dated 08/01/2021, as it was recorded that the applicant is suffering from post incident trauma and requires counseling by the CGC.

The applicant filed his second bail application before the JJB, which was again rejected on 08/02/2021, with an observation that the adult accused are the applicant’s family members and if the applicant is released on bail, he may again come in contact with these people or other people of similar criminal tendencies. Holding that safety of the child is inside the Observation Home, the application for his release was rejected.

11. As the applicant was above the age of 16 years on the date of commission of the alleged offence, a preliminary assessment was conducted by JJB under Section 15 and by

order dated 31/03/2021, passed by the JJB, the case of the applicant was transferred for trial before the Children's Court under Section 18(3) of the Act of 2015.

The order of transfer specifically record as under :-

“9. The C.C.L.'s mental capacity to commit the offence and ability to understand the consequences was evaluated by panel of Mental Health Experts of J.J.Group of Hospitals, Mumbai. The panel has taken several sessions. It is opined that C.C.L. is conscious and has no active psychopathology, no mental incapacity opined. There is no evidence of psychological impotence. From above report and interaction with C.C.L., it is clear that the C.C.L. has mental capacity to understand the consequences of his act and also his physical capacity to commit the offence.

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13. The C.C.L. is aged 16 years. His physical and mental assessment report shows that he has no mental incapacity. Therefore, it can be said that, he is aware about the consequences of his act. The acts alleged are of heinous nature. Therefore, the present case is found to be a fit case to be sent to the Children Court for trial.”

It was, therefore, ordered that the record and proceedings of C.C.L. be transferred to the Children Court for trial as per Section 15 read with Section 18(3) of the Act of 2015.

**12.** Pursuant thereto, Sessions Case No.343 of 2021 is pending before the Sessions Court at Dindoshi, Mumbai. The

applicant filed application for bail before the Special Court, which came to be rejected on 12/05/2021 on the ground of he having committed an heinous offence and if released on bail, he may contact the victim and may harm her and also on the ground that there is no permanent place of residence for him in Mumbai.

**13.** The applicant seeks his release on bail by invoking Section 12 of the Act of 2015, which reads thus :-

**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 '[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 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.”

**14.** Sub-section (1) of Section 12 makes a provision to the exclusion of anything contained in the Code of Criminal Procedure or any other law for the time being in force and is a special provision for a child, who is alleged to have committed a bailable or non-bailable offence and who is apprehended or detained by the police or brought before the Board. The mandate of Section is indicated by use of the word “shall”.

The only embargo when such a person shall not be released is provided by the proviso to the said section itself, where there is reasonable grounds for believing that the release is likely to bring that person into association with an known criminal or expose the said person to moral, physical and psychological danger or the person’s release would defeat the ends of justice and upon any of the contingency as above, the Board shall record the reason for denying the same and the circumstances that led to such a decision.

**15.** The applicant, who was arrested as juvenile and sought his release on bail by taking recourse to Section 12, was turned down firstly on 08/01/2021 and secondly, on 08/02/2021. The first order record that the allegations have



been made against most of the family members of the C.C.L. His uncle and father have been arrested and his mother is suffering from the trauma and unable to handle the situation. The second order rejected his prayer on the count that, the adult accused are alleged to be his family members and relatives, which means that if the child he released on bail, he may again come in contact of the said people.

Apart, the safety of the victim girl is also cited as a ground.

When the applicant approached the learned Special Judge by filing criminal bail application under Section 439 of Cr.P.C., his application has been determined by applying the parameters of Section 439 in complete ignorance of the statutory mandate contained in Section 12 of the Act of 2015.

**16.** Reading of Section 12 makes it imperative to release the applicant, who is alleged to have been committed bailable or non-bailable offence and this power has to be exercised notwithstanding anything contained in the Code of Criminal Procedure, which expect a decision of release, taking into account the provisions of Section 439 of Cr.P.C. It is not in dispute that the applicant is a child at the time of commission of offence and would fall within the meaning of 'child in conflict

with law', as defined in the Act of 2015.

In the scheme of enactment, it can be seen that Section 12 contains an imperative mandate to release a child on bail, when he is apprehended or detained in connection with an offence and it is a special provision, which stand to the exclusion of the Code of Criminal Procedure. Section 5 of the Cr.P.C. contained a saving clause, which reads thus :

**“5. Saving.-** Nothing contained in this Code shall, in the absence of specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred or any special form of procedure prescribed, by any other law for the time being in force.”

The parameters for considering an application for bail filed by a juvenile under Section 12 of the Act of 2015 are clearly distinguishable from the application filed under Section 439 of Cr.P.C. and after following the procedure as prescribed under the Act i.e. from Sections 15 to 18 when a decision is taken to try a juvenile as an adult, the issue that arises for consideration is, upon such a contingency, whether the benefit of Section 12 can be denied to him.

This precise question arose for consideration before the High Court of Delhi in case of **CCL 'A'** (supra) and vide a details

judgment delivered by the learned Single Judge on October 19, 2020, the issue has been specifically answered and on going through the said law report, I cannot disagree, but express concurrence with the view expressed by Justice Anup Jairam Bhambani.

17. The Delhi High Court, on considering the scheme of the enactment, formulated the following questions :-

“(a) When upon a *preliminary assessment* made by the JJB under section 15(2) of the JJ Act, the JJB is of the opinion that there is need for trial of the child as an ‘adult’ and it transfers the trial to the Children’s Court, does the child in conflict with law *de-jure* become an ‘adult’, to be treated as such in all subsequent proceedings ?

(b) Whether an application for bail is maintainable before the High Court under section 439 Cr.P.C. for a child in conflict with law, who is sent-up for trial as an adult before the Children’s Court ?

(c) Whether an application for bail is maintainable before the High Court under section 12 of the JJ Act for a child in conflict with law, who is sent-up for trial as an adult before the Children’s Court ?

(d) Whether an application for bail as in (c) above, is maintainable before the High Court as a proceeding of first instance or only as an appellate or revisional proceeding under section 101 read with section 8 of the JJ Act?”

On a detailed analysis of the provisions, the question has been answered as under :-

“26. Clearly therefore, 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*. It must be borne in mind that the Legislature has created this categorization based upon an assessment of the child’s “*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*”. If the intention of the Legislature was that upon such assessment, the child would *de-jure become an adult*, then the question of there being a separate Children’s Court to try him with specific safeguards provided for the trial would not arise. That however is not the case.

29. Now section 12 of the JJ Act, which deals with the grant of bail to a child, expressly contains a *non-obstante* phrase to say that a child shall “.....**notwithstanding anything contained in the Code of Criminal Procedure, 1973** or in any other law for the time being in force, be released on bail.....”. This leaves no manner of doubt that application of the provisions of the Cr.P.C. is excluded in the case of a bail plea of a child. Besides, section 12 is a *specific provision* in a *special statute* that deals with the matter of bail; and accordingly, application of section 439 Cr.P.C., is also necessarily excluded.”

**18.** Apart from this issue, the judgment also answered an issue, whether such an application is maintainable as

proceedings of first instance or only as an appellate proceedings under Section 101 read with Section 8 of the JJ Act, as under :-

“42. Section 101 of course provides that 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 Cr.P.C.; and upon a conjoint reading of section 101 and section 8(2), in particular its closing words ‘in appeal, revision or otherwise’, it is clear that the provisions expressly include an appeal against denial of bail by the Sessions Court; but the provisions do not preclude a fresh bail plea filed after bail has been declined by the Sessions Court.

45. It may be noted in the present case however , the Sessions Court, functioning as the Children’s Court, has denied bail to CCL-A; whereupon he has approached this court under section 12 of the JJ Act. Regardless of how it is captioned or titled, the present bail application may even be considered as an appellate proceeding under section 101(5)”.

**19.** Considering the special procedure prescribed while dealing with a child/juvenile in form of a special statute enacted to protect the interest of a child as defined in the Act and it being a special statute dealing with the children in need of care and protection and children in conflict with law, including apprehension, detention, prosecution, penalty or imprisonment, rehabilitation and social re-integration of the

children in conflict with law, the focus of the Act must not be lost sight of while construing its provision. A person, who is apparently a child and who is alleged to have committed bailable or non-bailable offence, who is brought before the JJB or the High Court, which has a co-extensive power in view of Section 8(2), such person shall be released on bail notwithstanding anything contained in the Code of Criminal Procedure. It is only those cases which are covered by the proviso appended to Section 12 when his release can be refused and apparently the three circumstances, which would warrant refusal are :-

- (a) Danger of the child being brought in association with the known criminal on his release;
- (b) There is risk of moral, physical or psychological safety of the child itself; and
- (c) Release of the child would defeat the ends of justice.

20. I am not satisfied with the argument of the counsel for the complainant and the learned A.P.P. that the applicant can be refused bail on any of the aforesaid contingencies. Though a vague attempt has been made to suggest that the family members of the applicant are also accused and he may come in contact with them, I do not find any material to that effect

placed on record. On the other hand, the report of the social investigation of the applicant, reveal that he has a mother and the father, who is working as a watchman, for last 20 years in the society, which has provided him a room. The mother, who is working as a housewife, has stated that three people are staying in the society and the CCL's both younger sisters are staying at native place. The observations of inquiry have revealed as under :-

“\* This is the 1<sup>st</sup> time CCL is apprehended under criminal charges and admitted to Observation Home.

\* CCL found to be silent & well behaved during the interaction. He denies his role in the offence & Claims to be innocent.

\* CCL has passed 10<sup>th</sup> class board examination, willing to take admission for 11<sup>th</sup> & to continue further education.

\* CCL is given an idea on legal consequences of involvement in the criminal act, counseled on involvement in any criminal act, association with bad peen. He is counseled to behave respectfully with girls and women.

\* CCL as well as parents of CCL can be directed to undergo counseling sessions at CGC & suitable NGO can be directed to supervise CCL for his betterment.

\* Mother is interested to receive the custody of CCL and assured proper supervision and control over the CCL. Concrete plan for education and betterment needs to be ensured.

\* Considering the best interest of CCL further necessary orders can be passed.”

**21.** Apart from this, the Child Guidance Clinic has also recorded as under :-

“Sandeep is deeply concerned and loves his family, worries about his parent’s well-being. According to the child, he is false implicated in the charges of his case and shared that his paternal uncle has a family conflict with the b/c’s family because of which he has been accused.

At the observation home, Sandeep is very responsive to counseling sessions, where he completed all homework given to him in the sessions. He actively participates in all activities inside the observation home and dutifully does his duties too. He positively engages himself through reading.”

The Counselor’s recommendation reads as under :-

“Sandeep needs to continue his education and be encouraged to fulfil his dream of joining the police force”.

**22.** The first factor, which would result in refusal of his release, is thus not satisfied. As far as the second aspect of there being a risk to the moral, physical and psychological safety of the child, there is no material to establish this risk. On the contrary, the assessment of the applicant, would reveal that he is a family person. The third contingency, being child’s release, would defeat the ends of justice, is probably the apprehension from the family of the victim that his release may impair the prosecution case or would danger the victim



girl. This factor can be taken care of so that the said possibility of she coming into contact with the victim is minimised, though can't be completely overruled.

**23.** The case against the applicant is transferred to the Children's Court and the applicant, on the basis of the assessment, deserve a trial as an 'Adult'. The Children's Court shall ensure that the final order with regard to the child in conflict with law is passed with special emphasis on individual child care plan for his rehabilitation, including follow-up by the Probation Officer or the District Child Probation Unit or a Social Worker.

**24.** It is not in dispute that the applicant is a "child" and though a serious attempt is made on behalf of the counsel for the complainant to submit that the offence of which he is accused, is a heinous offence, I see no provision in the Act, which would dilute the effect of Section 12, which contains a provision of mandatory nature to release the child/juvenile on bail, except when a satisfaction is recorded by virtue of a proviso appended to sub-section (1) of Section 12, which would not justify his release. The accusations faced by the applicant are undisputedly serious, but he must also derive the benefit of being a 'child', despite he being tried as an adult and the

benefit of Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015 cannot be denied to him. The factual matrix of the case would reveal that his application came to be rejected on three occasions, every time on unsustainable grounds. The report which is placed before me, which has analysed his physical and psychological parameters, do not reflect him as a desperado or a person misfit in the society. The reasons recorded by the JJB on two occasions and by the Special Court, while rejecting his application under Section 439 do not justify its existence, as the statements recorded therein are not factually correct. The applicant will take the consequence of his act, if at all during his trial, he found guilty. The Probation Officer report recommends that if an opportunity is given to him, he will be a better person and the report refers to his improvement in his behalf.

The applicant is now an adult and his education, which is stalled, cannot be further discontinued. The uncle of the applicant had filed an affidavit stating that he shall take care of the child and the apprehension expressed by the learned Special Judge while rejecting the application for bail, being not supported by any material, cannot be considered. The

applicant has positively responded to the rehabilitative efforts, during his stay in the Observation Home, which is in tune of the Act of 2015. He deserves to be reunited and restored with his family and it would be in his best interest so that he can develop himself with full potential. With the principle of 'presumption of innocence' incorporated in Section 3 of the Act, he is presumed to be innocent till he is convicted. Furthermore, by invoking principle of repatriation and restoration to the same socio-economic and cultural status that he was in, before commission of alleged crime, with no specific reason being traced out as to why he shall not be denied to repatriation and restoration, he deserves his release on bail under Section 12 of the Act. Hence, the following order.

**: ORDER :**

- (a) Application is allowed.
- (b) Applicant -Sandeep Ayodhya Prasad Rajak shall be released on bail in Sessions Case No.343 of 2021 (C.R.No.759 of 2020 registered with MHB Colony Police Station) on furnishing P.R. Bond to the extent of Rs.25,000/- with one or two sureties in the like amount.

The applicant shall be released on cash bail of Rs.25,000/- for a period of six weeks in lieu of sureties. During the said period, he shall arrange for the sureties.

(c) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any Police Officer. The applicant shall not tamper with evidence.

(d) The applicant shall attend the trial on regular basis, unless specifically exempted by the Special Court.

**25.** In view of the disposal of the application, interim application does not survive and stands disposed off.

**( SMT. BHARATI DANGRE, J.)**