



2024:CGHC:42584-DB

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPCR No. 150 of 2024

Bindesh Fulchand Netam S/o Shri Fulchand Netam Aged About 24 Years R/o Muriyapara Narayanpura, District Narayanpura (C.G.), Presently At Central Prison Jagdalpur, Civil Lines, Jagdalpur, Chhattisgarh 494001.

... Petitioner

versus

State Of Chhattisgarh Through Narayanpur Police Station, Narayanpur, Chhattisgarh 494661.

... Respondents

For Petitioner : Ms. Mahrukh Adenwala (through Video Conferencing) alongwith Mr. Aman Saxena, Advocates.
For Respondent : Mr. Shashank Thakur, Deputy Advocate General.

Hon'ble Mr. Ramesh Sinha, Chief Justice

Hon'ble Mr. Bibhu Datta Guru, Judge

Order on Board

Per Ramesh Sinha, Chief Justice

24/10/2024

1. The petitioner has prayed for the following relief(s):

“(a) That, this Hon'ble Court be pleased to call for the Progress Reports, Follow-up Reports and other Reports submitted by the

Probation Officer and/ or any other functionary of the juvenile justice system before the Sessions (POCSO) Court, Kondagaon, under section 19(4) of the JJ Act 2015.

(b) That, this Hon'ble Court be pleased to allow this petition and to quash and set aside the order dated 03-08-2022 passed by the Sessions (POCSO) Court, Kondagaon, as being ultra vires Article 14 and 21 of the Constitution of India and the Juvenile Justice (Care and Protection of Children) Act 2015.

(c) For costs of and incidental to this Petition;

(d) for such further and other orders and reliefs that the facts and circumstances of the case may require.”

2. The facts, as projected by the petitioner are that the petitioner was arrested under Crime No. 74/2017 dated 19.06.2017 registered by respondent police station along with five adult co-accused under section 376(D) of the Indian Penal Code and section 4, 6 and 17 of the POCSO Act. The date of birth of the petitioner is 04.08.1999 and as such, the petitioner was below 18years of age on the date of commission, hence, he was dealt under the provisions of the Juvenile Justice (Care and Protection of Children) Act 2015 (*for short, the Act of 2015*) but being above 16 years of age on the date of offence and having been alleged to have committed a heinous offence, a preliminary assessment was conducted under section 15(1) of the Act of 2015, and in August - September 2017, the Juvenile Justice Board, Narayanpur, transferred the petitioner's trial to the Children's Court [Sessions (POCSO) Court] under Section 18(3) of the Act of 2015. The petitioner was tried under section 19(1)(i) of the Act of 2015 as an adult by the Sessions (POCSO) Court, Kondagaon, along with the adult co-accused (Sessions Case No. 16 of 2017). The petitioner alongwith other adult co-accused were convicted by judgment dated 20.12.2019. On the date of conviction, the petitioner was 19 years of age and was imposed sentence of

imprisonment for 20 years under section 376 (D) of the Indian Penal Code read with Section 17 of the Protection of Children from Sexual Offences Act 2012 (*'for short, the POCSO Act'*) with fine of Rs. 1 Lac and in default thereof, to undergo further imprisonment for one year. An Individual Care Plan (for short, the ICP) prepared by the Children's Court [Sessions (POCSO) Court] was attached to the said judgment dated 20.12.2019 as per section 19(2) of the Act of 2015, and directions regarding follow-up were included therein. The said ICP denotes that the petitioner while in the place of safety should be provided with vocational training and counselling, and should be engaged with institutional sports (outdoor/indoor) and institutional creative activities / competitions. The said ICP also includes a detailed daily routine to be adhered to during the petitioner's stay in the place of safety. Upon conviction, the petitioner was placed in the place of safety at Jagdalpur, vide warrant dated 20-12-2019. The warrant provides that the petitioner should be detained at the place of safety till completion of 21 years of age, and thereafter the petitioner's case should be brought before the Sessions (POCSO) Court for inquiry under Section 20 of the Act of 2015. The warrant further provided that every year progress reports of the petitioner should be prepared and submitted to the Sessions (POCSO) Court. Accordingly, progress report dated 20.03.2021 was prepared by the Probation Officer of the place of safety and submitted to the Children's Court [Sessions (POCSO) Court]. The said progress report indicates that the petitioner has received informal education, takes part in institutional activities and practices yoga on a daily basis. The said report also indicates that the petitioner is not addicted to drugs and does not indicate any negative conduct on the part of the petitioner. The progress report dated 20.06.2021 was prepared by the Probation Officer of the place of safety

and submitted to the Children's Court [Sessions (POCSO) Court]. The said progress report indicates that the petitioner has received informal education, takes part in institutional activities and practices yoga on a daily basis. The said progress report also indicates that the petitioner not addicted to drugs. The said progress report does not indicate any negative conduct on the part of the petitioner. Another progress report dated 20.09.2021 also states similar things.

3. On 29.11.2021, a detailed Consultation Report was filed as the petitioner had attained 21 years of age. The said Consultation Report states that the petitioner's general conduct and progress in the Place of Safety is Very Good. The said Consultation Report further mentions that the petitioner is able to make friends quickly and has followed the rules and regulations of the institution, and that a positive change has been noticed in him. The said Consultation Report indicates that the petitioner willingly imbibed the positive interventions and influences in the Place of Safety. Regarding the petitioner's involvement in the offence, the petitioner mentioned that his then friends who were older than him were anti-social individuals, and that at that time the petitioner had no understanding of what was wrong and what was right. The said Consultation Report shows that the petitioner enjoys a cordial relationship with his family. The said Consultation Report observes that the petitioner is presently depressed as he is scared regarding his case, i.e., possible transfer to prison as he has now attained 21 years of age the petitioner is unable to sleep and doesn't feel hungry. The said Consultation Report states, "the child Bindesh Netam followed the rules of the institution and participated in the activities of the institution and sports activities, more particularly cricket. Through participation in sports, he is developing new interests. The child is repentant about the past incident, to ensure the child's mental stability,

the child is kept busy in various activities and institutional duties." The said Consultation Report further mentions that there has been a positive change in the child's character and conduct and the child lives in harmony with others in the institution and has not contravened any rules of the institution.

4. Ms. Mahrukh Adenwala, learned counsel appearing for the petitioner submits that the petitioner had undergone reformatory changes and should be released or should be transferred to jail to undergo remainder of the sentence. To enable such evaluation, periodic Progress / Follow-up Reports were to be submitted to the Sessions (POCSO) Court, which were submitted by the Probation Officer of the place of safety. The progress reports/follow-up reports (Annexure P/5 to P/7) reflect that the petitioner is a fit case for release as he had been positively impacted during his stay in child care institutions and had undergone reformatory changes. Despite the positive findings of the Progress Reports/Follow-up Reports, the Sessions (POCSO) Court passed impugned order dated 03.08.2022, whereby the petitioner was transferred to prison to complete the remainder of his sentence. That the said impugned order is perverse and unreasonable as it has failed to consider the progress reports / follow-up reports and other reports submitted by the Probation Officer and other functionaries of the juvenile justice legislation. The Sessions (POCSO) Court has transferred the petitioner to jail though the progress reports / follow-up reports indicate that the petitioner has undergone reformatory changes and can be a contributing member of society, and conclude that it is appropriate to release the petitioner under the supervision of the Monitoring Authority.
5. On the other hand, Mr. Shashank Thakur, learned Deputy Advocate General appearing for the State/respondent, relying on the return filed by

the State, submits that the petitioner was tried for committing the offence under Section 376(d) of IPC and Section 4, 6 and 17 of POCSO Act, 2012. It was the allegation against the petitioner that on 18/06/2017 at around 2 to 3 p.m. in the afternoon, he committed the offence of gang rape or aggressive penetrative sexual assault against the victim along with five others co-accused persons. The age of the petitioner was less than 18 years and the time of commission of offence and therefore he was tried as a juvenile in conflict with law. The trial took place in POCSO case No. 16/2017 before the Additional Sessions Judge (FTC) Kondagaon, District Kondagaon. After conclusion of the trial the present petitioner had been convicted under Section 376(d) of IPC and Section 17 of the POCSO Act, 2012 and punishment of 20-20 years simple imprisonment has been imposed upon him along with a fine of Rs. 1,00,000/- with default stipulation. vide judgment dated 20/12/2019. The order impugned herein i.e. dated 03/08/2022 has been passed by the Additional Sessions Judge FTSC (POCSO) Kondagaon, in accordance with the provisions of Section 20 of Act of 2015. The impugned order dated 03/08/2022 has been passed in accordance with law after the petitioner has attained the age of 21 years and it has been ordered that the petitioner (child in conflict with law), now aged 22 years shall be transferred to the place of safety at Central Jail, Jagdalpur for completion of remainder part of his sentence in Jail, after completion of 21 years of his age. The petitioner has committed very heinous offence of gang rape and considering the provisions of the Act of 2015 as well as after considering the progress records etc, of the petitioner, the Additional Sessions Judge FTSC (POCSO) Kondagaon has rightly pass the impugned order for completion of remainder term of his sentence in jail. It is submitted that the learned Additional Judge has passed the impugned

order after applying with the procedural requirements as contained in Section 20 of the Juvenile Justice Act, 2015 as well as considering other provisions of the Act of 2015 and as such, the present petition being devoid of merit and substance is liable to be dismissed at the threshold.

6. In response to the return filed by the State/respondent, the petitioner has filed a rejoinder to which an additional return has also been filed by the State/respondent controverting the submissions made by the petitioner.
7. Ms. Mahrukh, learned counsel for the petitioner submits that the sole issue that needs to be considered by this Court is as to whether the petitioner has undergone reformatory changes and should be released or should be transferred to jail to undergo remainder of the sentence when the progress reports indicate is in favour of the petitioner. He can be a contributing member to the Society. The impugned order also mentions the follow up report however, the decision has been taken which is extraneous to Section 20 of the Act of 2015.
8. Mr. Thakur submit that the learned Children's Court has come to the conclusion that releasing the petitioner will lead to his association with other crimes which in turn will affect him psychologically and also his future and therefore, the order impugned has been passed keeping in view the interest of the petitioner himself.
9. We have heard learned counsel for the parties, perused the pleadings and documents appended thereto.
10. Section 19 and Section 20 of the Act of 2015 reads as under:

“19. Powers of Children's Court.—(1) After the receipt of preliminary assessment from the Board under section 15, the Children's Court may decide that—

(i) there is a need for trial of the child as an adult as per the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) and pass appropriate orders after trial subject to the provisions of this section and section 21, considering the special needs of the

child, the tenets of fair trial and maintaining a child friendly atmosphere;

(ii) there is no need for trial of the child as an adult and may conduct an inquiry as a Board and pass appropriate orders in accordance with the provisions of section 18.

(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 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 counselling, behaviour modification therapy, and psychiatric support shall be provided to the child during the period of his stay in the place of safety.

(4) The Children's Court shall ensure that there is a periodic follow up report every year by the probation officer or the District Child Protection Unit or a social worker, as required, to evaluate the progress of the child in the place of safety and to ensure that there is no ill-treatment to the child in any form.

(5) The reports under sub-section (4) shall be forwarded to the Children's Court for record and follow up, as may be required.

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.

counselling and other therapeutic interventions with a view to promoting adaptive and positive behaviour etc.;
(cd) release the child and appoint a monitoring authority for the remainder of the prescribed term of stay. The monitoring authority, where appointed shall maintain a Rehabilitation Card for the child in Form 14.”

12. There is no doubt that the Act of 2015 and the Rules of 2016 are socio-beneficial legislation for the care, protection, rehabilitation and social re-integration of children in conflict with law and it is not punitive / retributive. However, another aspect of the matter that is to be kept in mind is that a juvenile who commits a heinous crime, if left unattended, may indulge in future offences of higher degree. Juvenile offenders who commit heinous crimes in India pose a significant challenge within the criminal justice system, prompting complex debates around crime, punishment, rehabilitation, and societal safety. This issue is underscored by the dichotomy between the need for reform and the imperatives of justice. The Act of 2015 seeks to balance both rehabilitative and punitive approaches for juvenile offenders involved in heinous crimes. Numerous social, psychological, and economic factors contribute to juvenile delinquency. Poverty, broken families, substance abuse, peer pressure, and lack of educational or employment opportunities are some of the driving forces behind youth involvement in crime. Additionally, easy access to drugs and weapons, combined with poor supervision, can lead young individuals down a criminal path. It is equally important to bear in mind that the juveniles involved in heinous crimes may pose a continued risk to society, and lenient approach could lead to a lack of deterrence. Stricter punishment approach serves both as a deterrent and as a form of justice for victims.

13. The recommendation of the Probation Officer dated 04.12.2021

(Annexure P/9) states that the petitioner may be released under the supervision of the Monitoring Authority.

- 14.** Monitoring juveniles in conflict with the law post-release is a challenging yet crucial task for India's juvenile justice system. The complexities of ensuring both privacy and adequate support, along with the lack of resources, make post-release monitoring difficult. However, failing to provide this monitoring undermines the goals of rehabilitation and can lead to higher rates of recidivism, compromising public safety and the juvenile's future potential. Juvenile justice system in our Country is often constrained by limited resources. Most juvenile homes are understaffed, and there is a lack of dedicated social workers or psychologists to follow up with juveniles post-release. Additionally, the absence of structured monitoring programs in rural and urban areas means that many juveniles go without support or supervision once released. Family and community support play a critical role in post-release monitoring, but this support is often absent due to the stigmatization of young offenders. Without a supportive environment, juveniles may return to previous social circles or habits that led to their initial involvement in criminal activities. The law enforcement agencies may lack the specialized skills needed to handle juveniles sensitively and appropriately during monitoring efforts, leading to potential issues of mistrust and resistance from the juveniles. The inadequacies in providing education, counseling, and vocational training can make post-release monitoring even more challenging, as juveniles often do not have the skills or self-confidence to reintegrate. If juveniles do not acquire skills for future employment or education during their stay, the likelihood of falling back into crime can increase without consistent follow-up. Juveniles who lack direction or support are more likely to relapse into crime, leading to higher rates of reversion. Additionally,

when individuals re-offend, they may face harsher penalties, as repeated offences are sometimes treated more severely under the law. This cycle can ultimately lead to lifelong involvement in the criminal justice system, which contradicts the rehabilitative aims of juvenile justice.

- 15.** This Court is unable to arrive at a satisfaction that on release of the petitioner under Section 20(2)(i) of the Act of 2015, he would not indulge into same kind of offence and that there will not be any chance of the petitioner reverting to criminal activities. Another practical aspect of the matter is that it would be difficult even for the Probation Officer to keep a watch over the juvenile and to monitor his activities after he is being released. Taking a lenient view and granting relief of such nature which has been sought in this petition, would amount to opening of flood gate for the similarly situated juveniles which would be highly detrimental to the society and may create a law and order situation.
- 16.** In view of the foregoing discussions, this Court is of the opinion that it is not a fit case where this Court should exercise its jurisdiction under Article 226 of the Constitution of India for grant of any relief as prayed by the petitioner.
- 17.** As a result, this petition is **dismissed**.

Sd/-

(Bibhu Datta Guru)
JUDGE

Sd/-

(Ramesh Sinha)
CHIEF JUSTICE

HEAD NOTE

While releasing a juvenile in conflict with law, who has attained the age of twenty-one years and yet to complete the prescribed term of stay in place of safety under Section 20(2)(i) of the Juvenile Justice (Care and Protection of Children) Act, 2015, the Court should also consider the aspect as to whether release of such juvenile would be in the interest of the juvenile himself and also in the interest of the society and whether, such release would help in achieving the rehabilitative aims of juvenile justice.